

Women and Sexuality in Nepal:

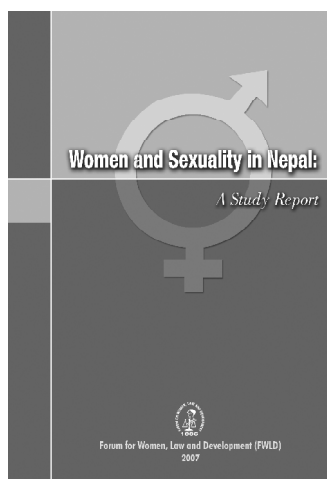
A Study Report

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Forum for Women, Law and Development (FWLD)

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WOMEN AND SEXUALITY IN NEPAL

A Study Report

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Forum for Women, Law and Development (FWLD)

FOREWORD

In Nepal, the idea persists that a woman's sexuality is inferior to that of a man's. The societal value system emphasizes the obligations of women, but fails to establish or uphold their rights and establish gender equality. The traditional roles of women in the household and in marriage are used to limit their autonomy as exemplified by the fact that a wife has a "duty" to perform sexual intercourse with her husband.

Traditionally, women have been viewed as inferior and their bodies impure. This view has led to the violation of many of women's fundamental rights, including health rights. The *Tij* festival and *Rishi Panchami* is widely practiced in Nepal and requires fasting even without drinking water for forgiveness of women's sins and bodily impurity. Additionally, in more remote regions, like the middle and far western parts of Nepal, *Chaupadi* is still practiced. This tradition, which views women as polluted or impure during menstruation and child delivery, forces them to live in cowsheds or other dirty places far from home. Women's mobility is also restricted from temples and other social functions during that time. This practice violates a multitude of human rights, including sexual rights and the rights to mobility, education and work that are guaranteed in Nepal's Interim constitution (2007) as well as many international human rights instruments to which Nepal is a party.

Society believes that if women's sexuality is not tightly constrained then chaos and social anarchy will result. Women are often seen simply as objects or pieces of property that belong to men; hence marital rape was not traditionally recognized as a crime. Some may attempt to justify crimes like marital rape and honor killings on this ground. In addition, in the past, a woman could not inherit property unless she remained chaste and loyal even after her husband's death.

Legislative reforms — such as bringing marital rape within the definition of rape, repealing the provisions requiring the wife to remain chaste to the deceased husband in order to enjoy the family property, repealing the ground of divorce for husband if the wife is infertile — have promoted some aspects of women's sexuality. The Interim Constitution recognizes the right to reproductive health as a fundamental right. This is displayed by legalized abortion and criminalized marital rape. However, full realization of these rights is hampered by widespread social disapproval.

Judicial decisions have also advanced the right to sexuality. In *Annapurna Rana's* case, a District Court ordered Annapurna Rana to have her virginity tested to establish if she was married or not. Fortunately, this order was quashed by the Supreme Court which cited respect for the privacy of women in overturning the lower court's ruling. Additionally, while marital rape has been interpreted as a crime, the penalty for it is exceedingly low thereby making it a bailable offence. In one marital rape case, the court stated that rape was a heinous crime that is much more serious than murder. While the court used this terminology to justify the seriousness of the crime, it continued to promote patriarchal values that view the chastity of women as more severe than homicide. The Supreme Court has recognized a law which provided a lesser punishment for the rape of a prostitute to be discriminatory and even recognized sex work as a profession. However, the 2007 Anti-Human Trafficking Law punishes the clients of prostitution.

The legal system frequently fails to fairly adjudicate the claims of sex workers and transgender people are often unable to get their rape complaints recorded. This illustration highlights the interactions between different aspects of sexuality, such as gender and sexual orientation, with other factors that already result in social exclusion in and of themselves, such as poverty and working in the sex industry. Such combinations result in special vulnerability and increased mistreatment of women and sexual minorities.

In addition to reproduction, human sexuality serves the important purposes of enhancing spousal or partner attraction, intimacy, affection, fidelity and social stability. The right to sexuality includes the right to liberty, privacy, family life, health and non-discrimination. Sexual rights are human rights

and are inextricably connected to the economic, social and political rights of a person; when one is violated, the others are affected. It is important to realize that cultural and social values and norms regulate the sexual behaviour of both men and women. For example, the “culture of silence” that restricts people from talking about issues of sexuality hinders both men and women from seeking professional help for sexuality-related problems when they need it. Thus, the enabling conditions for sexuality rights must encompass physical autonomy and their socially or communally embedded aspects. Even though a dialogue has begun and the legislation protecting sexuality is in the process of reformation, misconceptions of gender and sexuality still affect the realization of human rights in diverse ways. Development of a truly comprehensive national and international jurisprudence protecting all sexual and reproductive rights must account for this complexity.

This study highlights the social and cultural norms and laws that do not recognize sexuality. While the study shows a predominance of discrimination against women on the basis of sexuality on one hand, it also shows the lack of awareness of the existing legal provisions protecting sexuality on the other. It is our sincere belief that the study would facilitate in reforming the relevant laws and social and cultural norms that are expressly or impliedly against enjoyment by women of sexuality rights.

We would like to sincerely thank our 100 respondents who were very approachable and cooperative during the interviews and who devoted their valuable time and conscientiously and honestly answered the questions. We would also like to thank our research team members for their daunting tasks in bringing out this study report.



.....
Sapana Pradhan Malla

President

Forum for Women, Law and Development (FWLD)

ACKNOWLEDGEMENT

Sexuality simply means an involvement or interest in sexual activity. While the definition may be simple, there are as many different manifestations of sexuality as there are people in the world because sexuality includes the manner in which a person expresses himself or herself as a sexual being. Sexuality, sex and gender are all distinctly different concepts however to understand sexuality, one must understand the differences and the relationship between these three terms. Sex defines biological construction; gender is a socio-culture perception and sexuality falls somewhere in between. Though sexuality is different from sex and gender, these two components dominate and are key in determining the sexuality of a person.

Discourses on sexuality continue to debate on the source of sexual desires, whether genetic, hormonal, cultural or a combination of all. No clear answer has emerged till today. Scientific consensus state that sexuality is inherent and that a person cannot change his or her sexual desire. However, society and culture continue to play an influential role in deciding which type of sexuality is acceptable by weighing the consequences of accepting or rejecting certain behavior. People especially women and girls in Nepal are restricted in expressing or talking about sex as it is a taboo and considered to be a vulgar topic in our society. In contradiction, multiple sexual relations indulged in by men are considered to be “macho”. Society and even the state made laws are reinforcing perceptions on the sexuality of a person according to their biological sex and ignoring the existence of sexual minority. Sexual autonomy and sexual empowerment, two underlying principles and pillars of a rights based framework of sexuality, are denied. In this context, the study on “Women and Sexuality in Nepal” is an attempt to look into social and legal issues of sexuality from a gender and rights based perspective. It identifies and articulates recommendations for ensuring sexuality rights.

On behalf of Forum for Women, Law and Development (FWLD), I would like to express our sincere gratitude to all the members of the team who have worked towards planning, research and publication of the study. I am grateful to Ms. Sapana Pradhan Malla for her remarkable contribution towards making this research a success. I would particularly like to thank Mr. Phanindra Gautam and Ms. Sona Pradhan for unconditional dedication and immense enthusiasm while conducting the research. I would also like to thank Advocate Purna Shrestha, Ms. Shannon, C. Leong, Ms. Sarah Drinkwater and Mr. Aaron Schwid for their contribution in the report. Our special thanks go to all the interviewees who spared some of their time for the interviews and shared their personal experiences and opinions with us.



.....
Advocate Sabin Shrestha

Executive Director

Forum for Women, Law and Development (FWLD)

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Introduction

I. Background

Sexuality touches the ‘innermost realms of our being’.¹ Nonetheless, it is not solely biological or natural; rather it is much influenced by socially constructed behaviours, beliefs, norms, values, perceptions and misperceptions. Sexuality plays a crucial role in determining socio-political structures. Violence, social exclusion, humiliation, legal prosecution, excommunication and the threat of these acts are commonly used as a tool to control and regulate one’s sexuality.

Society seeks to control the sexual behaviour of men and women, however, the rationale behind and the intensity of this control is not gender-neutral. The social construction of sexuality plays a crucial role in maintaining the power relation of masculinity and femininity. In relation to women, sexuality is a powerful tool of patriarchy for controlling and subjugating women. When it comes to controlling the sexuality of women, the issue becomes much graver, much more violent and much more virulent.² The role of violence in enforcing as well as shaping female sexuality is profound. The social and cultural values which construct our gendered sexualities and that form the basis of

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1. Background paper for the study workshop on Sexuality and Violence against Women, July 25-26, 2004, Jakarta, Indonesia, organized by Asia Pacific Forum for Women, Law and Development, Forum Asia and Komnas Perempuan.
 2. Background paper for the study workshop on Sexuality and Violence against Women, July 25-26, 2004, Jakarta, Indonesia, organized by Asia Pacific Forum for Women, Law and Development, Forum Asia and Komnas Perempuan.

women's subordination often lead to denial of rights of women; perpetuating violence against women as well as closing doors to available remedies. The denial of these rights result in controlling the mobility of women that, in turn, impacts their participation in income generation, increases their vulnerability to HIV infection, and hinders their realization of human rights.

In a patriarchal society like Nepal, sexual behaviour affects the entire life of a person. The dignity of a person in a society is based on his or her ability or disability to maintain the sexual behaviour or norms of sexuality as expected by his or her community. However, sexuality or sexual behaviour cannot be studied in a vacuum. It is the outward expression of many different aspects. The examination of key factors such as the structure of patriarchy, religion, traditional values, and even the national and international legal system are crucial to understanding the connectivity of these aspects in human sexuality.

II. Objectives of the Study

- To identify the respondents' perception of sexuality and women's sexuality specifically.
- Review Nepal's obligations under international human rights instruments to protect women's rights to sexuality.
- Identify the positive and negative laws of Nepal that impinge on human sexuality or sexual behavior.
- Make significant recommendations to change the social perception and legal provisions that negatively affect women's right to sexuality.

III. Methodology of the Study

The methods applied to executing the research were:

1. **Reviewing** the conceptual framework of sexuality in the global context and assess the state's obligations under international human rights instruments in protecting women's right to sexuality.
2. **Interviewing Key Informants/Respondents** to collect perceptions about sexuality and women's sexuality. The interview used both open and close-ended questions. The scheduled interviews were administered to 100 key informants from various walks of life and organizations, namely:
 - Homemakers
 - Unemployed men
 - Doctors
 - Nurses
 - Lawyers/legal practitioners
 - Air hostesses, models, actors, singers, writers
 - Male and Female Sex Workers
 - Homosexuals, both Gay and Lesbian
 - Human rights activists
 - Students
3. **Collecting Case Studies** through primary sources during interviews to reflect the respondents' perception about sexuality. Some of the respondents gave some distressing anecdotal incidences and poured out their feelings on their own while some were hesitant to open up.

4. **Assessing Legal Consequences** the Interim Constitution of Nepal (2007) and other relevant laws that directly or indirectly impinge human sexuality, especially women's sexuality, were done to highlight on what sort of influence the Nepal's legal system has on sexuality. Significant judicial decisions that had positive or negative impact on the exercise of sexuality rights were also analysed.

IV. Limitations of the Study

The inferences or generalizations made in this study are based on interviews with the key informants. All the key informants interviews were only done within the Kathmandu Valley, thus, the study may not reflect the rural perception about sexuality, though some of the informants, like the unemployed men and sex workers, came from the rural areas. Most of the respondents were initially very hesitant to participate in the interview as they were felt awkward with the topic of "sexuality" which, according to them, was "a topic that is very immoral to be discussed." However, with much assurance and a guarantee that none of the respondents' names would be disclosed, they agreed to take the interview. During the interview, they were very reluctant to answer some questions and even left some unanswered. The interviewer felt that some of the respondents, especially women, did not provide truthful answers because, although some women said they had not had sex, they have answered the question on the use of contraceptives.

Concept of Sexuality

1. Definition of Sexuality

There is no universally accepted definition of sexuality found in international human rights instruments. However, there does appear to be a general consensus on what sexuality means. The World Health Organization (WHO) promulgated a broad working definition of sexuality in 2002, identifying it as “a central aspect of being human throughout life” that encompasses “sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction.” The definition further acknowledges that:

Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors.³

Sexuality has varying connotations around the world, resulting in broad differences in the freedoms and rights enjoyed by men and women in

3. This working definition does not represent an official WHO position and should not be quoted as such. This definition was elaborated as a result of a WHO-convened international technical consultation on sexual health in January 2002, and was subsequently revised by a group of experts from different parts of the world.

different regions. Cultural norms and practices regarding gender and sexuality are deeply entrenched in every level of society, and frequently influence the decisions of legislative and judicial bodies, law enforcement, employers and health care services. Human rights initiatives have increasingly encompassed sexuality, gender, and issues surrounding these topics. This chapter will explore the ways in which the concept of sexuality, particularly women's sexuality, has been defined.

II. Elements of Sexuality

A comprehensive view of sexuality includes social roles, personality, gender and sexual identity, biology, sexual behaviour, relationships, emotions, thoughts and feelings. Expression of sexuality is influenced by various factors including social, ethical, economic spiritual, cultural and moral concerns.⁴ Sexuality often confounds characterization because of the multiple domains and meanings it contains.⁵ It has been associated with other terminologies like reproductive and sexual health and rights. Thus, before exploring the definition of sexuality, it is necessary to consider these aspects and the correlation among them.

With the development of human rights and women's rights principles around the world an attempt has been made to define reproductive and sexual health. According to the Platform for Action adopted at Fourth World Conference held at Beijing in 1995:

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4. *Common Ground Sexuality: Principles for Working on Sexuality*; TARSHI, Delhi, 2001; p.4.
 5. Sexual Rights, Conceptual Advances: Tensions in Debate, work presented by Alice Miller at the "Sexual, Reproductive and Human Rights Seminar" organized by CLADEM in Lima, Peru, November 5 -7, 2003.

Reproductive health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes. Reproductive health therefore implies that people are able to have a satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so. Implicit in this last condition is the right of men and women to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of their choice, as well as other methods of their choice for regulation of fertility which are not against the law, and the right of access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.⁶

This concept of “reproductive health” puts women at the centre of the process and recognizes, respects, and responds to the needs of women and not only to those of mothers.⁷

Likewise, sexual health should include the following components:⁸

- the ability to enjoy mutually fulfilling sexual relationships;
- freedom from sexual abuse, coercion, or harassment;
- safety from sexually transmitted diseases; and
- success in achieving or in preventing pregnancy.

6. Para 96 of Programme of Action adopted at Beijing conference, 1995.

7. Rebecca J. Cook, Bernard M. Dickens, and Mahmoud F. Fathalla, *Reproductive health and human rights: Integrating medicine, ethics, and law*, Oxford University Press, New York, p. 11.

8. M.F. Fathalla, *From Obstetrics and Gynecology to Women's Health: the Road Ahead* (New York and London: Parthenon, 1997), 33-48. Quoted from Rebecca J. Cook, Bernard M. Dickens, and Mahmoud F. Fathalla, *Reproductive health and human rights: Integrating medicine, ethics, and law*, Oxford University Press, New York, p. 14.

This concept of sexual health disassociates the act of sex from reproduction. It establishes the notion that “sex was not meant by nature for its own sake, nor just as a tool for reproduction.”⁹

As advancements are made in the field of reproductive and sexual health, such benefits must be distributed among the population, so not only those with power or wealth can enjoy the advancements. This progress drives the idea that reproductive and sexual health are fundamental rights. Even though, there is no explicit, universally recognized definition of reproductive and sexual rights, academics and activists generally agree that based upon the fundamental principles detailed above, reproductive rights and sexual rights include the following elements:¹⁰

- The right to health, reproductive health, and family planning
- The right to decide the number and spacing of children
- The right to marry and to found a family
- The right to life, liberty, and security
- The right to be free from gender discrimination
- The right to be free from sexual assault and exploitation
- The right not to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment
- The right to modify customs that discriminate against women
- The right to privacy
- The right to enjoy scientific progress and to consent to experimentation

9. Rebecca J. Cook, Bernard M. Dickens, and Mahmoud F. Fathalla, *Reproductive health and human rights: Integrating medicine, ethics, and law*, Oxford University Press, New York, p. 14.

10. Center for Reproductive Rights (CRR), <http://www.reproductiverights.org/about.html>

Similarly, “sexual rights are based on certain ethical principles, such as bodily integrity (right to security in and control over one’s body);¹¹ personhood (the right to self-determination);¹² equality; and diversity (respect for difference).¹³ Based upon these fundamental principles the elements of sexual rights are:¹⁴

- Right to sexual pleasure without fear of infection, disease, unwanted pregnancy, or harm.
- Right to sexual expression and to make sexual decisions that are consistent with one’s personal, ethical, and social values.
- Right to sexual and reproductive health care, information, education, and services.
- Right to bodily integrity and right to choose if, when, how and with whom to be sexually active and engage in sexual relations only with full consent.
- Right to enter relationships, including marriage, with full and free consent and without coercion.
- Right to privacy and confidentiality in seeking sexuality and reproductive health care services.
- Right to express one’s sexuality without discrimination and independent of reproduction.

11. This means that all women and men have a right to not only be protected from harm to the body, but also to enjoy the full potential of the body.

12. This encompasses people’s right to make decisions for themselves.

13. “Reproductive and Sexual Rights, A Feminist Perspective” Sonia Correa and Rosalind Petchesky in Population Policies Reconsidered: Health, Empowerment, and Rights, Gita Sen, Adrienne Germaine and Lincoln C. Chen (eds), Cambridge, Harvard University Press, 1994, USA

14. “Reproductive and Sexual Rights, A Feminist Perspective” Sonia Correa and Rosalind Petchesky in Population Policies Reconsidered: Health, Empowerment, and Rights, Gita Sen, Adrienne Germaine and Lincoln C. Chen (eds), Cambridge, Harvard University Press, 1994, USA; Also cited in *Common Ground – Sexuality: Principles for Working on Sexuality*, published by TARSHI and SIECUS in 2001.

Even though the conflation of reproductive rights with sexual rights has inadvertently served to cause sexual rights to be seen as a subset of reproductive rights, the power of the sexual and reproductive rights articulation is undeniable. It combines the strengths of an affirmative demand for the conditions to enjoy sexual and reproductive health with a feminist commitment to challenge the sites of power that dominate in women's lives, even as we move to understand that women suffer and benefit differently, within various patriarchal structures.¹⁵

15. Sexual Rights, Conceptual Advances: Tensions in Debate, work presented by Alice Miller at the "Sexual, Reproductive and Human Rights Seminar" organized by CLADEM in Lima, Peru, November 5 -7, 2003

Perception of Sexuality in Nepal

I. Background

“What is sexuality?” asked the interviewer casually to some of the respondents. Here are a few of the responses she got:

- I have no clue; please explain
- I have never heard of the term, I have just heard “sex” so maybe it’s having sex
- Human biological feeling and need which is natural
- Emotional/social expression
- It is a legal right and a component of reproduction
- Sexuality is simply having sex
- Sexuality is eroticism, the human feelings, the passion
- Sexuality is having sex and the reproductive act and the process

The most negative/unpleasant comments from some of the respondents were:

- *Eesto chaada topic kina choose gareko? (Why did you choose such a vulgar topic?)*
- *“Sex” ko baare ma ta khulera bolnu aanaitik ho nee. (It is immoral to talk about sex openly.)*

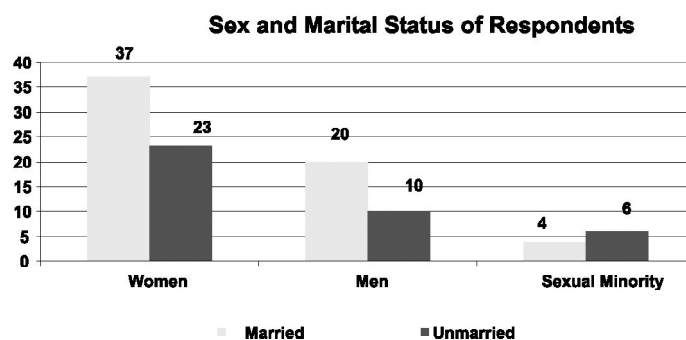
- Wives are like unpaid prostitutes and girls are so gullible and easy when it comes to having sex in Nepal.
- Women should not try to “act smarter” than the men.
- I would like my wife to be inferior to me so that I can take care of her; after all, it is a man’s duty to look after his wife.
- I hate these *Chakkas* (homosexuals/transgenders/intersexed).

In many societies, the idea persists that a woman’s sexuality is inferior to that of a man. This belief manifests itself in a variety of ways. Quite often, cultural values hold that sexual freedom, desire, and pleasure are necessary and natural for men and unnatural for women. Social roles for women emphasize their obligations but fail to establish or uphold their rights, or establish gender equality or reciprocity. In this chapter, an attempt has been made to survey the norms and values that have been shaping the perception of sexuality in Nepal.

Sex and marital status of respondents

There were 100 key informants/respondents/interviewees of which 90% were from Kathmandu, Nepal. Amongst the respondents, 60% were women (35 married, 23 unmarried and 2 widows), 30% men (20 married and 10 unmarried) and 10% sexual minorities (5 gays and 5 lesbians, - 4 married and 6 unmarried).

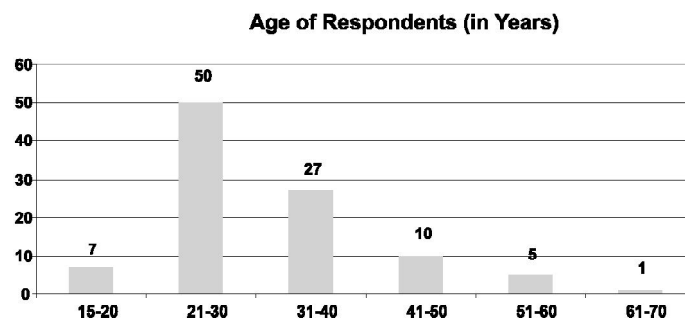
Chart 1



Age of Respondents

Out of the 100 respondents, 7% were 15-20 years old, 50% were 21-30 years old, 27% were 31-40 years old, 10% were 41-50 years old, 5% were 51-60 years old and 1% were 61-70 years old.

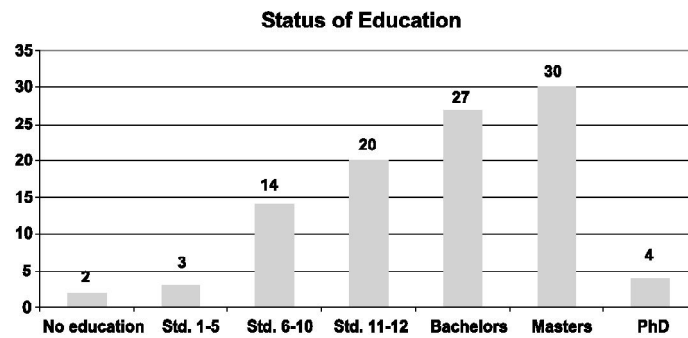
Chart 2



Status of Education

There were two respondents (one man and one woman) who had no education whatsoever. Three women had only received education from standard 1-5. From standard 6-10 there were 14 respondents out of which three were women, four men and seven sexual minorities. From standard 11-12 there were 20 respondents out of which 10 were women, seven men and three belonged to the sexual minority's category. There were 27 respondents who had acquired a Bachelors Degree out of which 19 were women, seven were men and one was a sexual minority. There were 30 respondents who had acquired a Masters degree out of which 9 were men and 21 women. Lastly, four respondents had acquired a Ph. D., out of which two were men and two women.

Chart 3

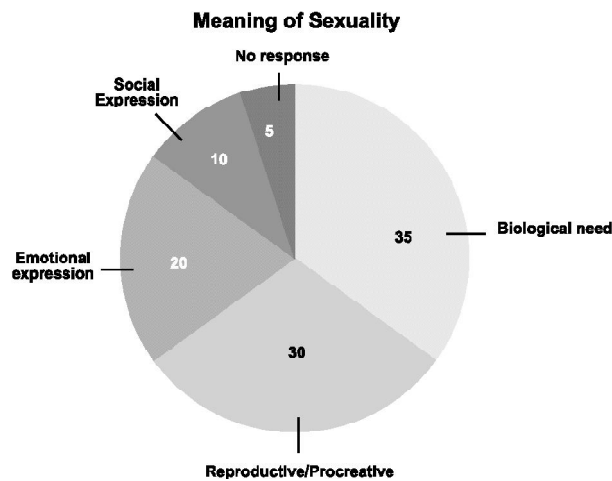


II. Basics on Sexuality

Meaning of sexuality

The preliminary question of the research was about the understanding of sexuality. Of the respondents: 35% viewed it as a biological need, 30% viewed it as a reproductive/procreative process, 20% said it was an emotional expression, 10% viewed it as a social obligation and the remaining 5% did not like to or know the answer.

Chart 4



Sexuality-indicative proverbs

We had asked the respondents if they knew any prevalent proverbs related to sexuality and we got multiple responses. Out of the 100 respondents, 33 said that they did not know of any proverbs or had never heard about any proverbs relating to sexuality. The largely repeated proverbs amongst the answers have been listed below.

Popular proverbs indicating sexuality

- **28 Respondents:** *Khutta bhaye jutta jatti paiencha* (if there are feet, there will be plenty of shoes available, meaning you can change your partner whenever you want.)
- **12 Respondents:** *Marda ko das woti* (man deserves ten wives)
- **6 Respondents:** *Pothi baseko swaudaina* (it does not suit a hen to crow meaning that women must not talk much)
- **6 Respondents:** *Sinki pakaunu pardaina, saali fakaunu pardaina.* (*Sinki* is a special type of dried vegetable that can be easily eaten uncooked. *Saali*, a man's wife's younger sister, needs no hard persuasion. So the implied meaning is that women are easily available.)
- **5 Respondents:** *Barha varsha ma poie aayo ma raadi lai joro aayo* (I am an unfortunate whore to fall sick at the very moment when my husband comes home after 12 long years)
- **4 Respondents:** *Mardlai bhirangi, naamarda lai luto* (men who are very sexually active get infected with sexually transmitted diseases, while men who are sexually inactive suffer from scabies)
- **2 Respondents:** *Saali aadha gharwali* (the wife's younger sister is like a co-wife)

Others include:

- *Sautako ris le logneko kaakhma mutnu* (Anger and jealousy gets a wife so glued to her husband's lap that she urinates on him for the fear of losing the seat to her co-wife)
- *Chori manche bhayera chaati tankayera hinnu hundaina* (a daughter must not walk with an inflated chest, meaning a girl should not be too smug or proud)
- *Chori ko jaan aarkako bhitta taalne* (women are for the service and benefit of others)
- *Bhoko ma paeenas bhuteko makai, bains ma paeenas poie* (When you were hungry, you couldn't get roasted corn to eat; and when you were fully blossoming, you couldn't get a suitable partner.)
- *Booka lai bhanda baakhrilai hattar* (A female goat is more hurried than a male goat)
- *Jasai paryo raati, usai budi taati* (with the touch of night-fall, the old woman seems turned on)
- *Mahila haru khulera haansna hundainan, veshya haru hasdachan* (women must not laugh openly; only prostitutes laugh openly)

Whose rights do these proverbs indicate and how does it affect women?

The respondents were asked whether the proverbs suggest that men or women possess the rights to sexuality. The majority of the respondents said that the proverbs indicated that the rights belonged to men. In the next question on the effect of these proverbs on women, out of the total 100 respondents, 38 did not give answer to the questions.

We received multifarious answers out of which, the most dominant were: five respondents (3 men 2 women) said that women are being treated as pleasurable sex objects, four men four women said women were unfortunately lagging behind and seemed to have an impeded pace, five said women were held down and were miserably dominated. Three women said women are simply being dominated. Four women and three men said women's sexual rights are refrained and they were made to believe that women had no sexual rights at all. Amongst 10 sexual minority respondents, six said that the proverbs emphasize the rights of both men and women and four said that the proverbs emphasize the rights of men only.

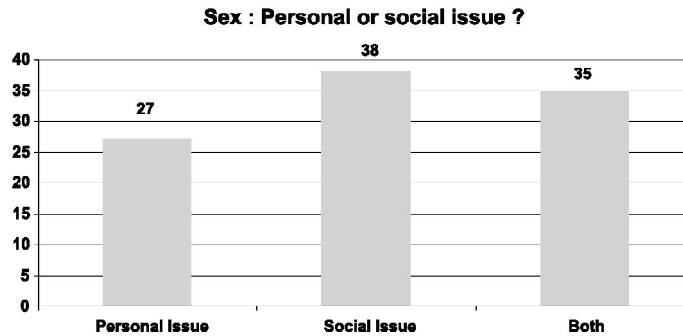
Chart 5



Sex: A Personal or Social Issue?

On the question of whether sex is a personal or a social issue, 27 of respondents said that it is a personal issue, 38 said it is a social issue and 35 viewed it as the combination of social and personal. Interestingly, all of them responded to this question.

Chart 6



Is there any link with sex and caste?

I loved my boyfriend very much. We were in the relationship for four years. My boyfriend belonged to a different caste. We both loved each other very much....at least I thought so.... One fine day, I found out that my boyfriend was dating another woman. I found out that the women belonged to the same caste as my boyfriend. I was told that they were all set to marry....my boyfriend was cheating on me behind my back and was eager to marry this women mainly because his family supported her and hated me only because I belonged to a different caste. I was shattered when I was told that they were getting married. How could I forget that I had 5 abortions because of my boyfriend? How could I forget that I was economically dependent on him and that I had nowhere else to go besides him? How could I forget all the moments I spent day and night with him? I could not take it and decided to talk to the girl. I talked to her and to my surprise; she was oblivious to the whole scenario. She immediately cancelled the wedding and said that I had all her support. If it hadn't been for her, I would have killed myself. She

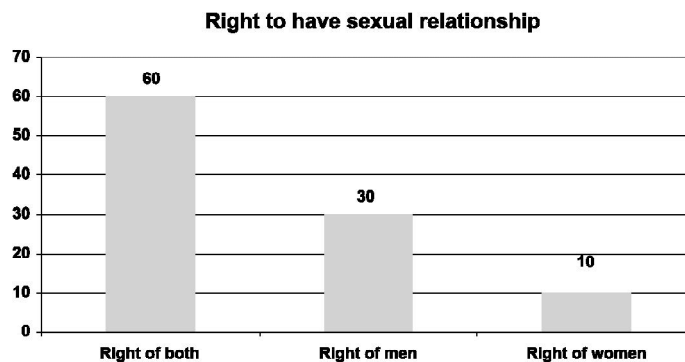
was very supportive and showed me numerous reasons to move on in life. My boyfriend is now married to another woman; a woman belonging to the same caste as his. But I am moving on in life now...thanks to that woman who showed me various reasons to survive.

III. Women's Sexuality and Chastity

Right to have sexual relationship

On the question of whose right it is to have sexual relationships, 60 respondents said it is the right of both men and women, 30 said it is the right of men and 10 said it is the right of women.

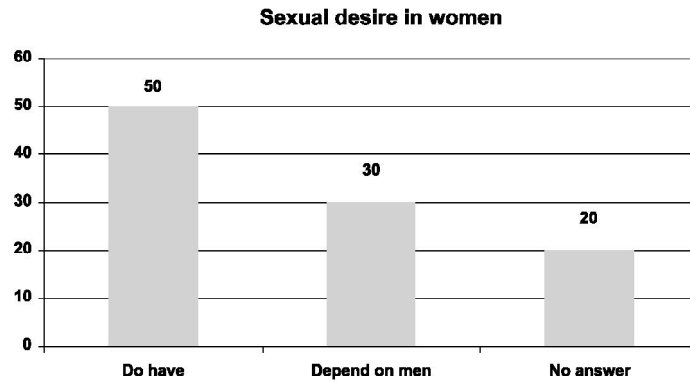
Chart 7



Sexual desire in women

To the question "whether women have sexual desires or not", 50 respondents said they do, 30 said it depends on men, i.e. if men want to have sex it is a partner's (women) duty to be ready without any qualms, to be "available" and satisfy his desires), 20 of the respondents did not answer the question.

Chart 8

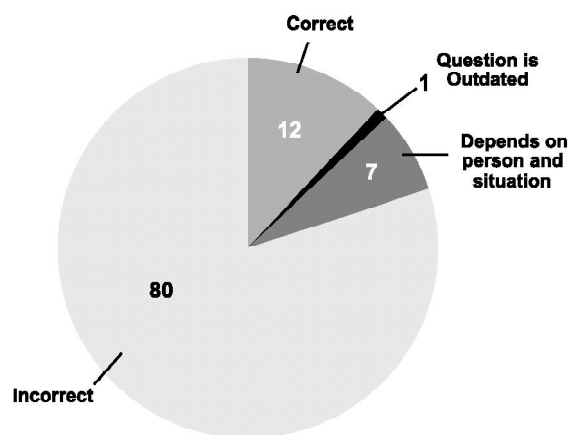


Women want sex, but cannot express their desire?

Respondents were asked if it was true that women could not express their desire to have sex. Of the 100 respondents: 80 said that this was incorrect; 7 said that it actually depends on the person and the situation; 1 said that our question was outdated as women are not shy anymore and that, while women used to be shy, modern women are very straightforward; and 12 said that this was correct as most Nepalese women are either unable to directly accept a sexual offer or even if they want to accept, they simply say “no” for extra attention.

Chart 9

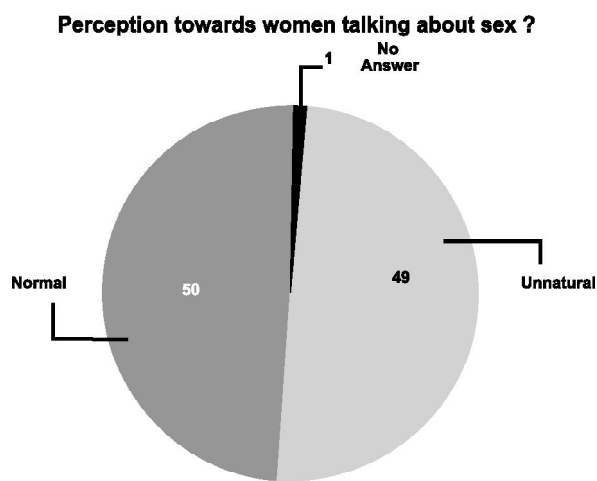
Women want sex, but cannot express their desire ?



Perception towards women talking about sex

The question “how do you feel when women talk about sex” got multiple responses; 50 respondents said they had positive feelings and that it was normal, while 49 of them said that they perceived it as unnatural, unusual and/or vulgar, 1 person did not answer.

Chart 10

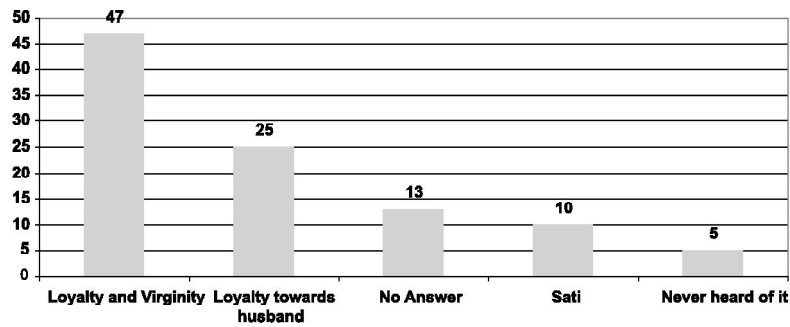


Satitwa: The chastity of women

To remain chaste and faithful towards the husband is one of the religious values and virtues of a wife in Hinduism. This value has been reflected in the law against rape that a woman may even kill the rapist in exceptional circumstances in order to protect her chastity. However, on the question as to what *Satitwa* (chastity) meant, 5 respondents said they had never heard of the term, 25 of them said it is loyalty towards one’s husband, 13 gave no answer, 10 said it meant *Sati* (the tradition of a woman sacrificing her life by flinging herself in the fire after her husband expires), 47 said it meant loyalty and virginity.

Chart 11

What does Satitwa mean ?

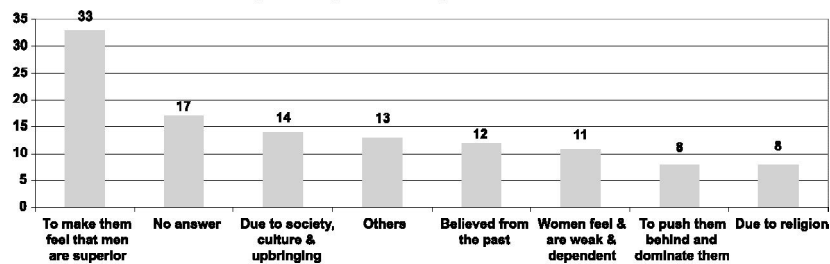


Why are only women expected to remain chaste?

The additional question to *Satitwa*, "Why are only women expected to remain chaste?" also received multiple answers. Out of all of the respondents: 33 said that women are expected to maintain *satitwa* to make them feel that men are superior to them; 12 respondents said that it was something that was traditionally believed in and had been carried over into today; 8 said that *satitwa* was maintained only to hold women back and dominate them; 14 said that society, culture and the upbringing of people makes people maintain *satitwa*; 11 said that because women's feelings and sentiments are weak and they are dependent *satitwa* is maintained; 8 said that it was due to religion; and 13 respondents gave other reasons.

Chart 12

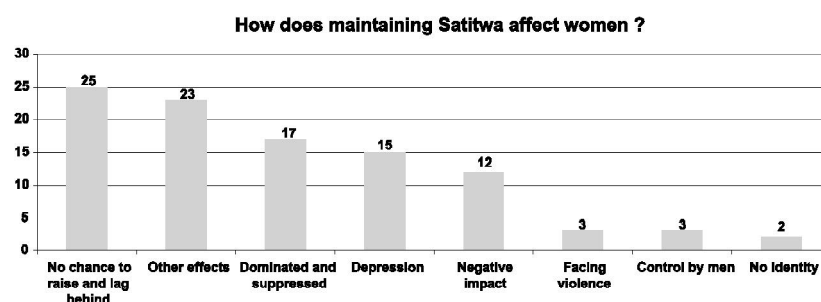
Why are only women expected to maintain Satitwa ?



How is the maintaining of chastity affecting women?

After our interviewer explained what *satitwa* means, our subsequent question was how the concept of maintaining *satitwa* affects women. To this question, 25 respondents said that women would not get a chance to rise and would instead lag behind; 17 said women would always be dominated and suppressed; 15 said women would fall into depression; 12 respondents said that it does have a negative impact on women whatsoever; 2 said women would have no identity of her own and would undergo psychological and mental torture; 3 said that they would definitely face violence; and 3 said it would keep men in control and therefore, women would refrain from being promiscuous.

Chart 13



Some of the respondents shared their feelings on the matter as follows:

“My husband always comes home very late at night. He just doesn’t care how I feel. I have a 6 month old son and I have to take care of the household chores. I have no support from him whatsoever. I feel so frustrated at home. I feel so lonely.....”

“When I found my husband was involved in an extramarital relationship, he asked me to forgive him and committed to come back to me. I asked him if he would

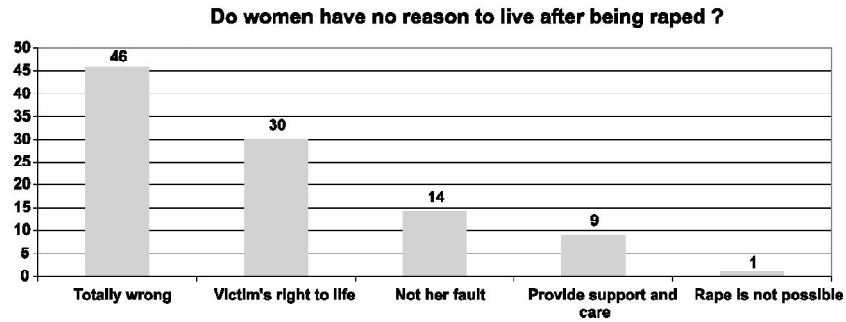
be able to accept me if I had an affair. He bluntly said: "How could I accept you after you sleep with another man?"

"I am aware of a case where a husband abandoned his wife after she was raped by an unknown person. I also know of a case where the husband forced his wife not to file a complaint after she was raped by an unknown rapist for fear of degrading the family's name. In one case, the parents forced the daughter not to file a complaint of rape as it would tarnish the family's reputation in the society. In the case of rape, the hostility rate is incredibly high in the courts; as a result, we lose many cases. It is so unfortunate we see victims as criminals because of the link with chastity"

Perceptions about the life of a woman after being raped

It is the societal thinking that a woman's life comes to an end if she is raped: she has no reason to move on, she brings shame and disgrace to her family, and engagements/marriages/relationships may be broken even though she is an innocent victim. The respondents were asked how they felt about this type of thinking: 46 said that it was totally wrong; 30 said that the victim has every right to life and she has to move on; 14 said that it is not her fault; 9 said that we should support and encourage the victim and 1 said that rape is not possible. The respondent who said that rape is not possible said that women love sex and hence move around looking for sex and even while being raped, she enjoys every moment.

Chart 14



IV. Sex Outside of Marriage

Single or Multiple Sexual Relationships?

To the question whether sexual relationships should be maintained with only one person or whether it could be maintained with more than one person, 60 respondents said that the relationship must be maintained with only one person and that partners should be loyal and 40 said that it could be maintained with more than one person. Of those who said a relationship with only one partner must be maintained, various reasons were given: 37 said STDs and HIV/AIDS could spread as a result of having multiple partners; 11 said that there has to be loyalty in a relationship; 3 said that there has to be love and one should not betray their partner; 3 said there has to be trust; 2 said it was just not good and it was immoral; 2 said the family of the one who was having sex with multiple partners would face disgrace and shame and 2 said that a person would lose his/her self-respect if they had sex with too many partners.

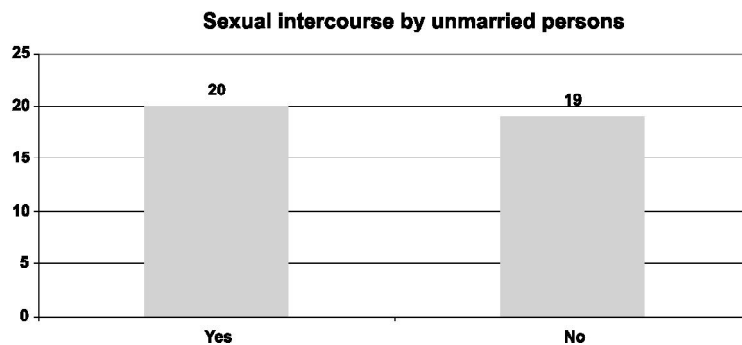
Out of the 40 respondents who favored multiple sex partners: 16 said it was a personal choice to decide to have sex with any number of people; 13 said life has to move on if a relationship is not working or if one is dissatisfied; 4 said that it was absolutely a personal choice whether or not one wants to have sex with one person or change the partners

now and then; 1 said that it is a person's right to have sex with different partners; and 6 said it really depends on the situation and whether the relationship is a premarital or an extramarital affair. These 6 respondents viewed that it is all right if one change his/her partner before marriage, but that it was wrong to have an extramarital affair.

Sexual intercourse by unmarried persons

The next question was to the 39 unmarried respondents on premarital sex. Out of them, 20 said that they had had sex and 19 said that they didn't. Interestingly, two-thirds of those saying that they had sex were men and three-fourths of those saying that they did not have sex were women.

Chart 15

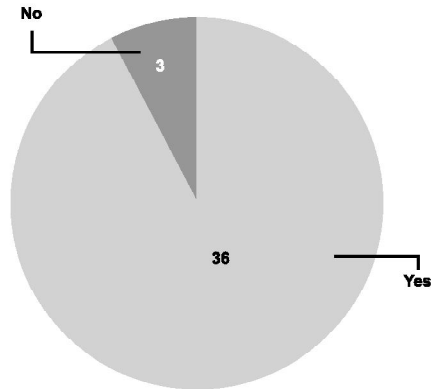


Information on unmarried person involved in sexual relationship

An additional question to the unmarried respondents was whether they knew other unmarried persons involved in sexual relationships. To this question, 36 said yes they were aware and only 3 said they didn't know.

Chart 16

Information on unmarried person involved in sexual relationship

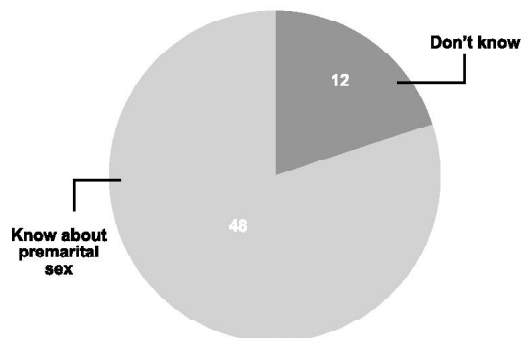


Sexual relationship before and after marriage

The question of “are you aware of anyone having a physical relationship before and after marriage?” was asked only to the married respondents. Out of 61 married respondents (including two widows), 48 of them said that they knew people who had had pre-marital sexual relationships, while 12 of the respondents said they had no such information. Two-thirds of the respondents who said they had information of persons involved in premarital sex were male.

Chart 17

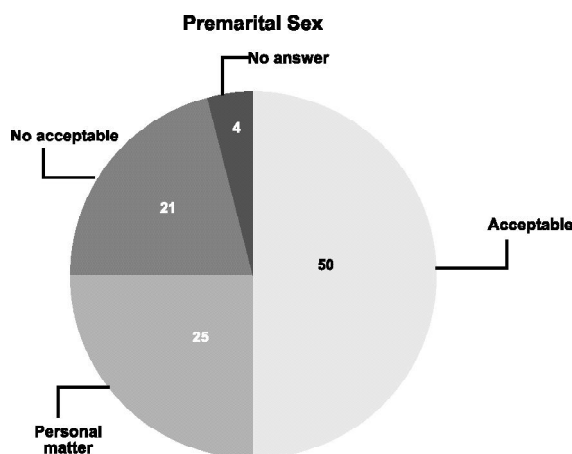
Sexual relationship before and after marriage



Perception on pre-marital sexual relationships

Out of the total respondents, 50 viewed pre-marital sex as an acceptable practice, 25 of them said it is entirely a matter of personal choice, 21 said it is not acceptable and 4 of them did not answer. Interestingly, out of those viewing pre-marital sex as acceptable, 80 percent of them were men and 20 percent women. Similarly, of those perceiving premarital sex as unacceptable, 80 percent were women and 20 percent were men.

Chart 18



Having sex with a girlfrind : A crime?

My girlfriend and I were caught in a hotel room by the police. I was taken aback as to why I was being penalized. We were taken into custody and were not set free until our guardians were called. The police complained about me and my girlfriend having sex in the hotel room and used derogatory comments that left us embarrassed to death. Most of the police were foul-mouthed and kept

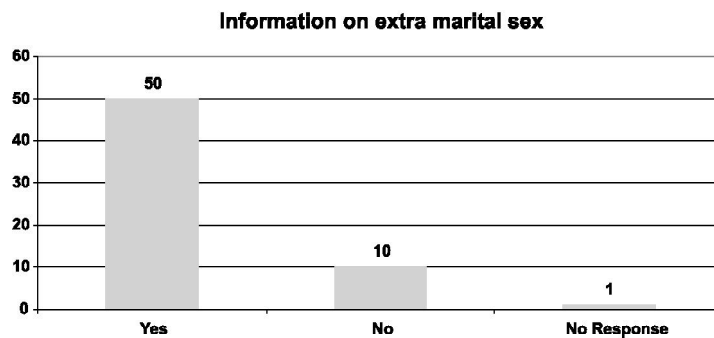
abusing me when I was behind the bars. The police harassed us and the society harassed us even more after we were set free. I did not understand why they took this crude action, as she was my girlfriend and not a prostitute. It was not offensive whatsoever because we were "in" the room and not misbehaving out in the public. Engulfed by shame and disgrace my girlfriend left for Australia, and we had to end our two-year-old relationship.

V. Extra Marital Affairs

Information on extramarital sex

The 61 married respondents were also asked whether they knew of anyone involved in an extra-marital sexual relationship during marriage: 50 respondents said that they had heard or knew people involved in an extra-marital sexual affair, 10 respondents said they did not know anyone involved and 1 respondent preferred not to answer.

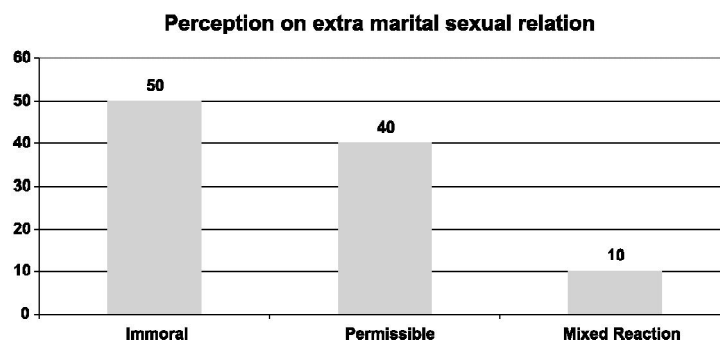
Chart 19



Perception of extramarital sexual relationships

All the respondents were asked about their perception of extramarital sexual relationships. Among them, 50 said that it is immoral and disrespectful to one's relationship and 40 said it is permissible in certain circumstances such as if either of the spouses is dissatisfied or unhappy or if there is a mutual understanding of moving ahead with the extramarital relation. Some of them thought it to be acceptable if it is safe.

Chart 20

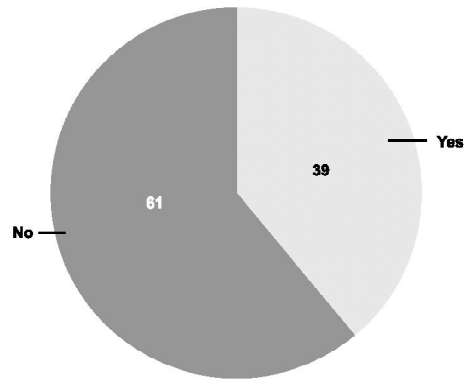


Extramarital sex: grounds for divorce?

One important issue associated with sexuality in Nepal is extramarital sex being a ground for divorce. When we asked the respondents if they knew that one of the grounds for divorce was extramarital sex, 39 respondents said they know about it, but amongst them, some said that they thought it applied for women only and not the men. The remaining 61 respondents said they did not know that it was a ground for divorce.

Chart 21

Are you aware of that one of the grounds for divorce is if either spouse indulges in extramarital sexual intercourse ?



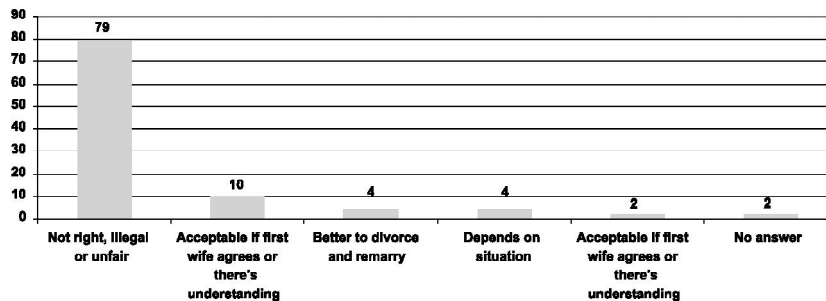
VI. Bigamy and Polygamy

Views on bigamy/polygamy

On the respondents' views on bigamy/polygamy: 79 of them said that it is not the right thing to do, it is against the law or it was unfair; 4 of them said that it is always better to divorce and remarry than commit bigamy/polygamy; 4 of them said it depends on the situation and why one commits bigamy/polygamy; 2 said that it is acceptable; 10 said it is acceptable only if the first wife agrees or there is an understanding between the spouses; and 2 did not answer.

Chart 22

How do you look at bi/polygamy



The sexuality of men allows them to exploit women

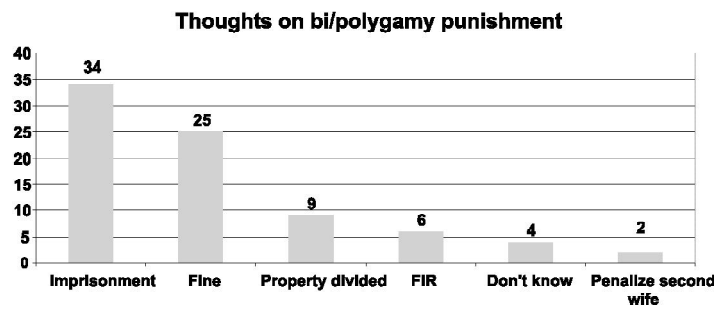
I love sex. I have sex with multiple women at a time. But women are foolish. Why am I saying this? Well, I had sex with a woman who must have been around 35 years old, old enough to make her own decisions and differentiate between right and wrong. We made passionate love and really enjoyed ourselves. But the stupid woman got pregnant. And can you believe me? She wanted to marry me and wanted to keep the child. Well, I love philandering and I could never accept the baby or marry her. I love women only for sex and nothing more. I don't want a woman forcing me to marry her; it is such an unwanted headache. She started saying she was in love with me and I had no options but to start avoiding her. I made it clear that if she wanted the baby, she should not involve my name with it. She had no heart to abort the baby and decided to give birth, all by herself....without my support. After seven months she had a miscarriage. I didn't know whether I was happy or I felt bad... I learned a lesson.....always wear a condom!!!

Criminalization of bigamy/polygamy

To the question "are you aware that bigamy/polygamy is illegal?" 80 respondents said that they were aware and 20 said they were unaware. Some of the respondents even said that they had seen many cases of bigamy/polygamy. When the 80 respondents who were aware of the law were asked to mention how the law criminalizes bigamy/polygamy, multiple responses were given: 34 said the husband would be imprisoned; 25 said that the husband would have to pay a fine; 9 said the property of the husband would be divided between the wives; 6 said the most essential thing to do when the crime was committed was

to file an FIR (first information report) or simply file a case; 2 said that the second wife gets penalized; and 4 said that they did not know in detail. Despite knowing that bigamy/polygamy is a crime, people commonly practice bigamy/polygamy. One respondent even shared a proverb "*dui swasniko poi kuna pasi roi,*" which means: a man with two wives has always to lament in the corner. The ones who commit bigamy/polygamy feel that it is a personal matter and have either not realized that it is a crime against the state or are indifferent to the consequences they have to face for committing the crime.

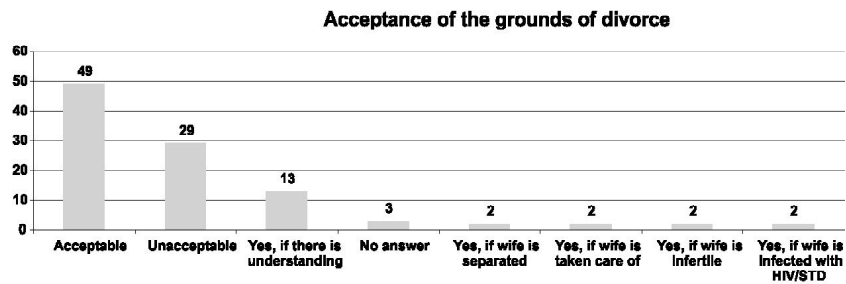
Chart 23



Grounds for bigamy/polygamy:

After explaining the grounds for bigamy/polygamy, they were asked how they perceived these grounds: 49 respondents said that it was acceptable; 29 said it was absolutely not acceptable and that a spouse has to maintain loyalty; 3 of them gave no answer; 2 said it was alright if the wife lived separately; 2 said it was fine if the first wife was taken care of; 2 said it was acceptable if she is infertile; and 2 said it was acceptable if she had STDs or HIV; and 13 said it was alright if there was an understanding with the first wife.

Chart 24



Information about invalidity of law requiring return of property

The Supreme Court invalidated a provision in the country code that if a woman sells off her property to a man and later on she enters into marriage with that man, the woman has to return the property so sold off to her parental family members. The respondents were asked if they were aware of the court ruling: 84 said they did not know about it and 16 responded that they did.

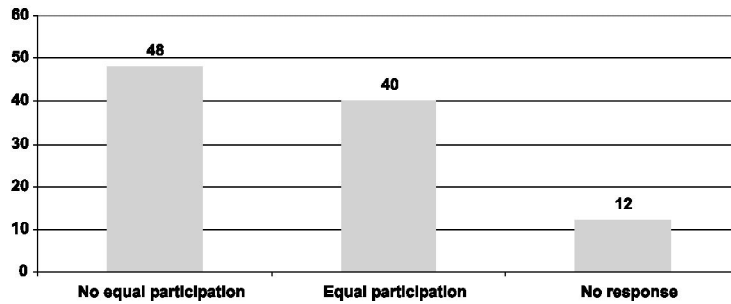
VII. Participation in Sex

Equal Participation while having sex

On the question of whether the respondents, who had been involved in a sexual relationship, equally participated while having sex many respondents chose to make two or even three answers. Out of the total respondents, 48 of them said they did not have equal participation, 40 said they used to have equal participation and the rest chose not to answer. Of those saying yes, 80 percent were men, 15 percent were women and five percent did not answer. Of those saying no, 85 percent were women, 10 percent were men and five percent did not answer.

Chart 25

Equal participation while having sex



Sexual Autonomy Deprived

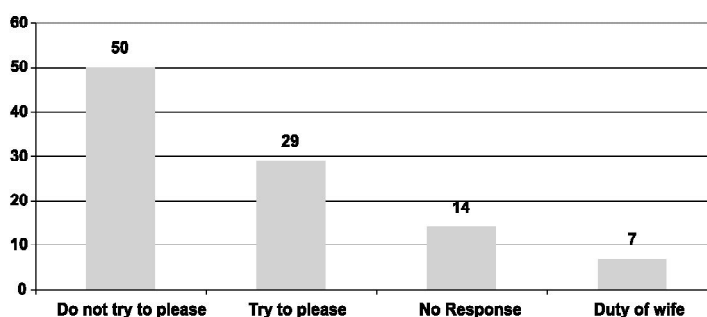
When I want to have sex, I never get it, but when my husband wants, I have to be ready for that. He used to have sex with me only for his selfish satisfaction. He never tries to please me. We never use condoms because I have no strength to negotiate safer sex. I'm scared he might get angry with me. I use other family planning contraceptives but not condoms; and I use these contraceptives because he demands it, in order to avoid pregnancy. I found condoms in his wallet one day. When I asked him, he simply diverted the topic. My husband is sexually very active. I found out he was having sex with a prostitute. I was never angry with him despite his infidelity. I told him I was ready to watch porn movies and try to improve my skills in the sexual activities, only to satisfy him, but he underestimates me and thinks I am incapable of learning the tactics to please him. I feel so dejected and helpless. I have a family and I am just compromising for my children.....living a servile life every moment.

Partner's efforts to please/satisfy while having sex

Of the participants who admitted to having sex, 50 said that they do not try to please their partners during sex, 29 said they do, 7 of them said it was the duty of the wife and 14 of them did not respond. Of those who tried to please their partners, 80 percent were men and 20 percent were women.

Chart 26

Partner's efforts to satisfy while having sex

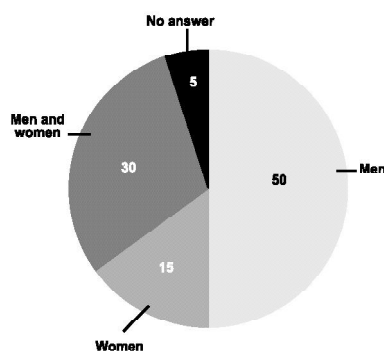


Initiation of sex

To the question "who initiates sex:" 50 respondents said it was men, 15 said it was women, 30 said it was both men and women, and 5 did not answer the question.

Chart 27

Initiation for sex ?



VII. Marital Rape

Marital sex without consent of the wife

The next question was about the respondents' views on sex within marriage without the consent of the wife. Of the respondents, 44 said that it was something inevitable as it is believed that once a man and a woman gets married the man will have every right to have sex with his wife with or without her consent. Of the other respondents: 39 said it was clearly rape; 7 said it was the husband's right, 7 said that it was a man's necessity and 3 said that a wife has to bear this much at least.

Chart 28

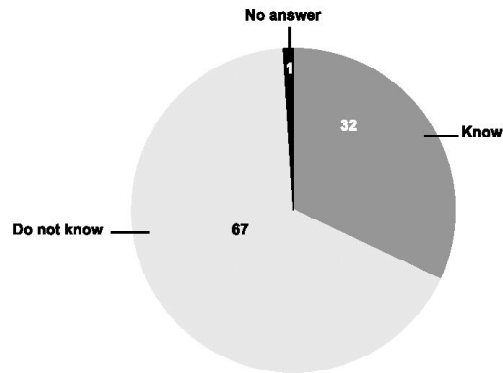


Criminalization of marital rape

The respondents were asked if they had any knowledge of the criminalization of marital rape. Of the 100 respondents, 67 said that they do not know about it. Of these 67 respondents, some expressed shock when they were told that a husband who rapes his wife could be sentenced to jail. They had not heard the term "marital rape" and they were in disbelief. Of the remaining respondents, 32 said they knew about the marital rape law and 1 did not answer. Although the majority of the respondents were from Kathmandu and were highly educated, the level of ignorance regarding this law was quite high.

Chart 29

Marital sex without consent of wife

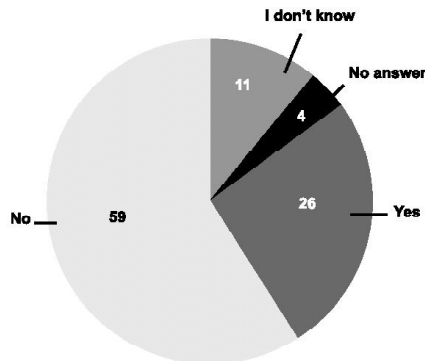


Is the marital rape penalty sufficient?

Some of the respondents, who were aware of the criminalization of marital rape, were unaware of the legal penalties against it. It was explained that the current penalty was 3 to 6 months of imprisonment for marital-rape. The respondents were then asked the particular criminal sentence was sufficient? Of the respondents: 59 said it was not sufficient, 26 said it was sufficient, 11 said they were not sure, and 4 gave no answer.

Chart 30

Do you think the current provisions against marital rape is sufficient ?



If the punishment for marital rape is not sufficient, what should it be?

The next question was, if the penalty for marital rape is not adequate, how much or what should it be? Out of the 59 respondents who said the punishment was insufficient: 6 favoured a generally more stringent or strict punishment; 3 said compensation to the victims from the husband's family, 11 said 1 year imprisonment would be sufficient; 4 said 1-2 years imprisonment; 5 said imprisonment for 3 years or more; 8 said imprisonment for 5 years or more; 5 said imprisonment for 10 years or more; 6 said life imprisonment; 1 favoured to death penalty; and 3 said that it should be the same punishment as that of raping any other woman. The one respondent who favoured the death penalty was one of the sexual minorities, that person stated that "raping a wife is like raping any other woman. A rapist should not be spared, even if he is the husband". Some male respondents also mentioned that women were trying to break the marriage institution.

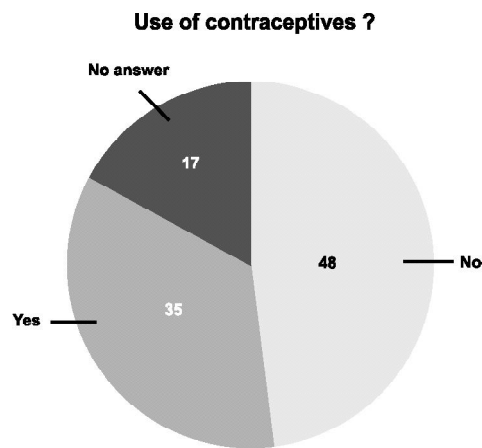
IX. Sex Education and Contraceptives

Use of contraceptives

To the question on awareness about contraceptives, all of the respondents said they are aware about them. However, on the use of contraceptives: 48 respondents said they did not use contraceptives, 35 said they did and 17 did not answer. Out of the 35 respondents who used contraceptives, we received multiple responses: 10 men said they used condoms, 5 women said they used contraceptive pills, 4 women said they used injections, 1 used a Copper-T, 1 used Norplant and 4 women had had permanent operations and the rest did not mention the device they were using. Out of those who did not use contraceptives: 9 men said their wives had had a permanent operation, 3 men had undergone a vasectomy and 2 said they followed a natural

method to prevent pregnancy. Other respondents did not feel comfortable sharing information on the method they used.

Chart 31

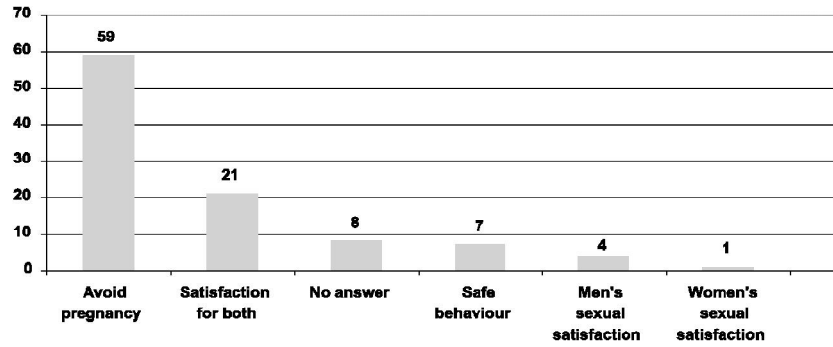


Focus on selecting contraceptives

Those who had had sex were questioned about what considerations affected their choice in contraceptive over others. This is how they responded: 59 respondents said it is for avoid unwanted pregnancies and very few of them said it is for safe sexual behavior and health purposes, like avoiding AIDS and other STDs and to; 4 said it was for the men's sexual satisfaction; 1 said it was for the women's sexual satisfaction; 21 said it was for satisfaction of both men and women; 8 gave no answer and 7 said for safe sexual behaviour. However, some women said that they either used the Copper-T or Norplant only to avoid pregnancy. Their husbands liked having sex without a condom for absolute sexual satisfaction.

Chart 32

Focus on selecting contraceptives

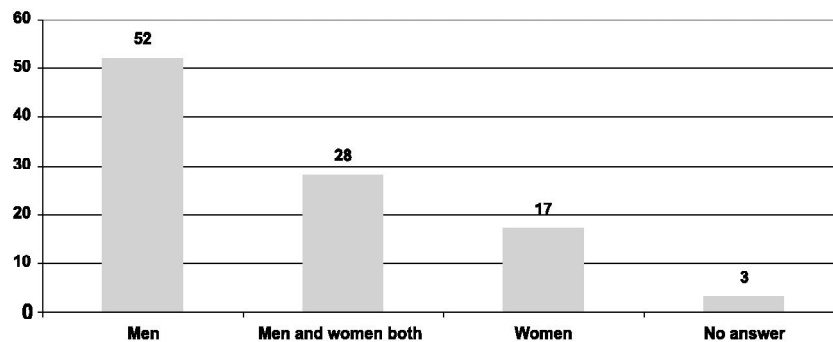


Right to select contraceptive

On the question “who makes the decision on the type of contraceptives used?” 52 respondents said it was always the men, 28 said it was both men and women, 17 said it was women, and 3 did not answer. All of the female respondents said that they never buy contraceptives in the market because it is highly embarrassing. The male respondents said that they buy condoms when there aren't many people around the shop. The male respondents said that even if there are people around, they lower their voice and ask for the condom due to embarrassment.

Chart 33

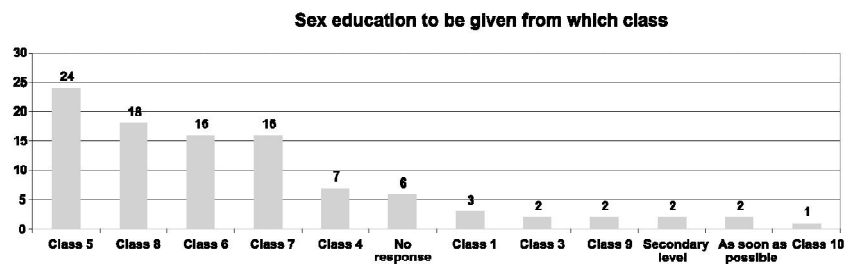
Selection of contraceptives



Need for sex education

The next question was about the need for sex education in Nepal. Overwhelmingly, 99% of the respondents said it was necessary and only 1% said there was no need for sex education. The level of sex education that is necessary was asked of those who said yes: 3 said it must be started from class one; 2 said class three; 7 said class four; 24 said class five; 16 said class six; 16 said class seven; 18 said class eight; 2 said class nine; and 1 said class ten; 2 said from the secondary level; and 2 simply said as soon as possible. The rest (six) did not respond. One person who did not favour sex education and argued that sex education would corrupt children.

Chart 34

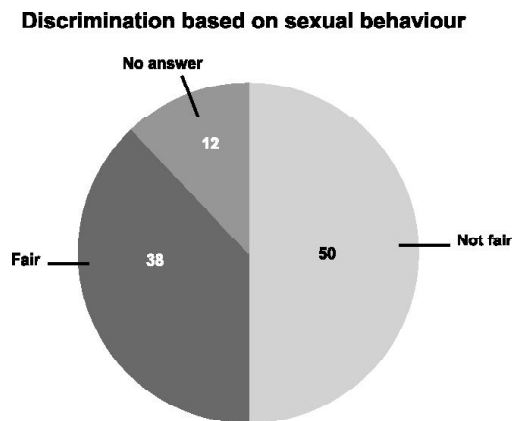


X. Discrimination

Discrimination based on sexual behaviour

The respondents were asked whether it was fair to discriminate on the basis of a person's sexual behaviour. Of the 100 respondents: 50 said that it was not fair, 38 said it was fair; and 12 gave no answer to the question.

Chart 35



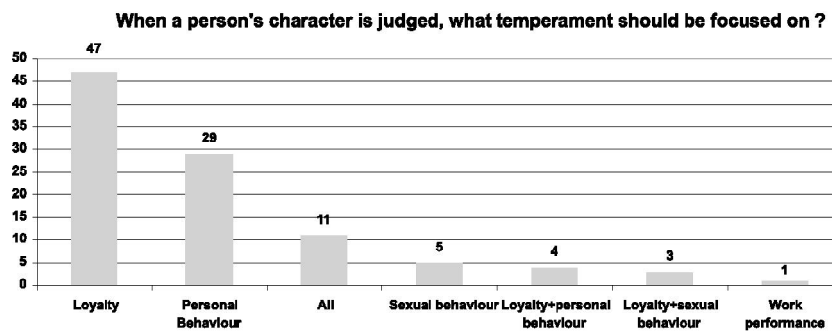
The respondents who favoured discrimination gave a variety of rationales including: that there has to be discipline and that it is imperative that discipline be maintained; that homosexuality is very unnatural and immoral; that unnatural sexual behaviour should not be legitimized and that homosexuality is unethical. The 50 respondents who said one should not discriminate on the basis of sexual behaviour gave various reasons; 22 said everyone should have equal rights no matter how people want to have sex and that it is a personal and private matter. Additionally, 15 said that it was a matter of choice and one should be able to do what s/he desires; 1 said homosexuality is natural, 1 said every individual has the right to sexuality; 6 said it was a very personal matter; 4 said discriminating against someone is wrong no matter what the reason is; and 3 said homosexuality is genetic so one should try to understand the way other people feel. Other statements include that sexual behaviour and having sex is not the only priority in life and there is more in life; that equal opportunities and normal behaviour towards homosexuals are essential; and that people should not be judged on the basis of their sexual orientation. One respondent said "don't forget, homosexual are also humans" and one of the

homosexual respondents mentioned that they “find heterosexuals abnormal. How can one have sex with the opposite sex?”

Basis of personal judgment

To the question “how should one judge a person’s character?” multiple answers were given: 47 of the respondents said that it should be based on loyalty towards the person’s partner; 29 said it was on personal behavior; 5 said it was on sexual behavior; 11 said a person’s character should be judged on all three of these (loyalty, personal behavior and sexual behavior); 4 said both loyalty and personal behavior; 3 said both loyalty and sexual behavior; and 1 said work performance.

Chart 36

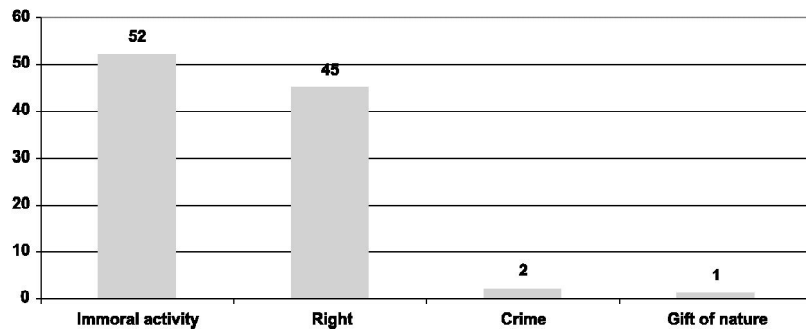


Perception of Homosexuality

On homosexuality, 52 respondents viewed it as an immoral activity, 45 viewed it as a right, 2 regarded it as a crime and 1 said it was a gift of nature.

Chart 37

Perception on Homosexuality



Sexuality associated with women's character only

The next question asked was: "why sexuality, and not something else, is always associated with a woman's character?" A broad range of answers given were:

- 33 said that the sexuality of a woman is always a sizzling topic when judging a woman's character and this is done only to dominate women to make them feel weak and inferior;
- 28 respondents said it was due to societal values that have been existing for years;
- 13 said judging a woman on her sexuality was tradition and would continue because people always follow tradition;
- 6 said that it was because of religion;
- 6 said that was because women in Nepal lagged behind, were weak and could not speak up for themselves, therefore, when their sexuality was discussed they did not have the courage to speak up for themselves;

- 4 said women are treated as sex objects which are only for sexual pleasure and nothing else;
- 2 said that because purity is associated with sex and women are always expected to maintain their purity, a woman's sexuality is always discussed when talking about her character;
- 2 said that sex had always been a hot and eye-popping topic which was also taboo and that when it comes to talking about women's sexuality it was even more interesting, especially in a country like Nepal;
- 3 of them said that sex is looked at as men's right only and not a woman's right;
- 1 said it was all due to a lack of sex education; and
- 2 said that their upbringing had been in this sort of environment where people love to gossip especially about a woman's sexual relations and, although men and women are both involved in sex, women are always blamed and fingers are pointed towards her if she has sex before marriage.

Sex work: a moral or a rights issue?

I am a gigolo. Nobody knows about my profession as a commercial sex worker because it is considered to be a big taboo in Nepal, even though most men and women do visit sex workers. I provide services for women, foreigners and sometimes Nepalese. I fear that society will ostracize me if it is ever discovered that I am a gigolo. Sexual minorities are pathetically rejected and marginalized by society. I am doing this simply for the money because I have no other means of support myself and I haven't acquired the necessary degrees to make myself a decent

man. An elderly woman forced me to have sex, but she was willing to pay only a meagre amount; less than what I charge. She abused and insulted me after having sex and said that I was not even worth what she had paid me and that she deserved more sex. I felt really cold when she insulted me and I felt this profession was not worth what I thought it to be. I don't want to work as a gigolo....there is so much unwanted hostility one has to bear.....but what can I do? It has become a hobby now.....a hobby hard to abstain from and a strange hobby that will help me survive.

Sexuality and International Human Rights Instruments

Many international human rights instruments¹⁶ and international institutions have been advancing and interpreting critical aspects of sexuality.¹⁷ The following is a discussion of the treaties, consensus documents, and institutions considered to be landmark developments in the international jurisprudence on sexuality and the state obligation arising out of these instruments.

I. The United Nations Charter

One of the basic purposes of the United Nations is to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.¹⁸ The Preamble to the Charter expressly provides that the United Nations is determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small. A United Nations member country must uphold these ideals.

16. Charter based and Treaty based

17. *Sexuality, Gender, and Rights: Expanding Theory and Practice in South and Southeast Asia*, Geetanjali Misra and Radhika Chandiramani, Sage Publications 2005, page 18.

18. Article 1(3) of the Charter of the United Nations.

II. The Universal Declaration of Human Rights (UDHR)

The UDHR acknowledges that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. With regard to the right to sexuality, the UDHR provides that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family; that they are entitled to equal rights to enter into marriage, during marriage and at its dissolution; and that marriage shall be entered into only with the free and full consent of the intending spouses.¹⁹ Although the UDHR does not expressly deal with sexuality rights as such, the rights it intends to protect and promote are closely related to sexuality rights. Furthermore, it also guarantees the right to nationality, which is also closely related to sexuality, as there are instances in which women have to make a hard choice between their right to nationality and the right to marry and found a family in many countries.

III. International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1965)

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) protects a broad range of civil, political, social, and economic rights, including the right to health and the right to be free from violence.²⁰ The Committee to Eliminate All Forms of Racial Discrimination also implicitly acknowledges the relationship between gender norms and other types of social constructions. General Comment No. 25 recognizes that many forms of racial discrimination impact women differently or disproportionately, and that some forms of racial discrimination, such as sexual violence during armed conflict, are experienced only by women.

19. Article 16 of the Universal Declaration of Human Rights, 1948.

20. See International Convention on the Elimination of All Forms of Racial Discrimination, Article 5.

IV. International Covenant on Civil and Political Rights (ICCPR) (1966)

The International Covenant on Civil and Political Rights (ICCPR) contains several provisions relevant to sexual rights. Article 1 state, “all peoples have the right to self-determination.” Article 9 establishes that all people are entitled to “liberty and security of person.” Further elaborating on the concept of self-determination, Article 23 states, “no marriage shall be entered into without the free and full consent of the intending spouses.”

The United Nations Human Rights Council, the body responsible for enforcing the ICCPR, has also addressed abortion through concluding observations to state parties. Article 6 of the ICCPR establishes “the right to life.” The Committee has stated that this Article should not be interpreted restrictively and has also criticized states for enacting legislation that criminalizes or severely restricts access to abortion, often referring to such legislation as a violation of Article 6.²¹

Furthermore, in a recent breakthrough in 2005, the United Nations Human Rights Council, the body responsible for enforcing the ICCPR, held that denying access to legal abortion is a violation of women’s most basic human right.²² Specifically, denying access to legal abortion violates Articles 7 and 17 of the Covenant,²³ which protect the right to be free from torture and inhumane and degrading treatment, and the right to privacy, respectively.

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21. *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights*, Center for Reproductive Law and Policy and University of Toronto International Programme on Reproductive and Sexual Health Law, page 151.
 22. *KL v. Peru* (2005).
 23. Press Release: “UN Human Rights Committee Makes Landmark Decision Establishing Women’s Right to Access to Legal Abortion,” http://www.reproductiverights.org/pr_05_1117KarenPeru.html

The ICCPR also recognizes the need for the elimination of gender discrimination by guaranteeing the “equal rights of men and women to the enjoyment of all civil and political rights” set forth in the treaty,²⁴ as well as through a broad non-discrimination clause that states “the law shall ... guarantee to all persons ... protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.”²⁵ In 1994, the United Nations Human Rights Council determined that “other status” extended to sexual orientation.²⁶

V. International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) contains similar broad language to the ICCPR regarding non-discrimination, including the “other status” catch-all provision found in the ICCPR Article 3.²⁷ The ICESCR is also the first human rights treaty to require states to recognize the right to health and to take steps to achieve that right for the benefit of families.²⁸ The ICESCR specifically protects “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”²⁹ General Comment No. 14 states that this right includes the right to sexual health, freedom, and education.

24. International Covenant on Civil and Political Rights, Article 3.

25. *Id.*, Article 26.

26. *Toonen v. Australia* (1994) UN Doc CCPR/C/50/D/488/1992.

27. International Covenant on Economic, Social, and Cultural Rights, Article 2, which states that “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

28. *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights*, page 17.

29. *Id.*, Article 12.

VI. Convention to Eliminate All Forms of Discrimination against Women (CEDAW) (1979)

The Convention to Eliminate All Forms of Discrimination against Women (CEDAW) specifically acknowledges that existing cultural norms of women's gender and sexuality damage their status in society. The CEDAW's avowed objective is to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.³⁰ Furthermore, Articles 4 and 5 acknowledges that the importance of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and the development of their children.

This convention defines the term "discrimination" very comprehensively covering almost all aspects of discrimination.³¹ It defines discrimination to include any distinction, exclusion or restriction made on the basis of sex. However, it has been criticized for its failure to include violence as a form of discrimination against women. In most of the cases, control over female sexuality is the underlying cause for violence against women.

Therefore, it is critical to include violence as a form of discrimination against women.

Article 16 of the CEDAW protects equal rights of men and women regarding marriage, children, and reproductive education. The provision states that men and women shall have the "same right to freely choose a spouse and to enter into marriage only with their free

30. Convention to Eliminate All Forms of Discrimination Against Women, Article 5.

31. Article I of the CEDAW reads, "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

and full consent.” Furthermore, men and women shall have the “same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.” The CEDAW Committee’s General Recommendation No. 21 recognizes that harmful and discriminatory traditions often take precedence over law, and calls upon countries to act to bring traditional practices into alignment with the law.³² Notably, the CEDAW Committee is the only international human rights committee to identify the age of 18 as the appropriate minimum legal age of marriage for both men and women.³³ General Recommendation No. 21 argues that an earlier age of marriage for girls is inappropriate because of the associated health risks.³⁴ Further building on the links between sexuality and health rights, General Recommendation No. 24 acknowledges that women and girls often lack the health services necessary to ensure complete sexual health, including HIV/AIDS prevention and treatment.

Article 12 calls for the elimination of gender-based discrimination in the field of health care, including a clause specifically detailing equal access for men and women to family planning services.³⁵ This provision also obligates states to “ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.” General Recommendation No. 24 elaborates on Article 12 by stating that gender discrimination occurs whenever a health care system fails to provide gender-specific services, such as abortion or obstetric treatment.

32. *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights*, page 35.

33. *Id.*

34. CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations.

35. “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.” – Convention to Eliminate All Forms of Discrimination Against Women, Article 12.

CEDAW also comprehensively addresses other areas relating to women's sexuality and gender issues, including employment,³⁶ education,³⁷ and political participation.³⁸ Article 6 covers the prevention of human trafficking and the "exploitation of the prostitution of women." General Recommendation No. 19 recognizes that gender-based violence is a form of discrimination against women, and that forced marriage is a form of such violence against women.

VII. Convention on the Rights of the Child (CRC), 1989

The Convention on the Rights of the Child (CRC) is the first international human rights instrument to include the term "sexual" in its language.³⁹ Article 34 of the CRC obligates states to protect children from "all forms of sexual exploitation and sexual abuse." The CRC also implicitly acknowledges that a negative view of women's sexuality persists, by stating that "education of the child shall be directed to ... equality of the sexes."⁴⁰ Article 3 prohibits discrimination based on gender. The CRC also reiterates the right to maternal health and its intrinsic link to the health of children. Article 24 states that "state parties shall recognize the right of the child to the highest attainable standard of health ... state parties shall pursue full implementation of this right, and in particular, shall take the appropriate measures ... to ensure appropriate prenatal and post-natal health care for mothers."

In concluding comments, the Committee on the Rights of the Child has also stated that child and forced marriage are harmful traditional practices that must be eradicated under the Convention's Article 24.

36. Convention to Eliminate All Forms of Discrimination Against Women, Article 11, which prohibits discrimination by employers based on gender, marital status, or pregnancy.

37. *Id.*, Article 10.

38. *Id.*, Article 7.

39. www.sxpolitics.org

40. Convention on the Rights of the Child, Article 34.

The Committee has also alluded to the underlying lack of empowerment of girl children as a cause of child and forced marriage, and has recognized that large age differences between spouses tend to reinforce harmful gender stereotypes.⁴¹

The CRC can also be broadly construed to protect children's rights to sexual and reproductive education. Article 13 protects the right of children to receive and impart information of all kinds.

The UN Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography, adopted in 2000, recognizes the especial vulnerability of children, particularly girl children, to sexual exploitation and abuse. State parties enacted the Option Protocol "in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions" out of a deep concern "at the widespread and continuing practice of sex tourism, to which children are especially vulnerable" and acknowledgment that "a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited."⁴² The Optional Protocol obligates states to prohibit trafficking children, child prostitution, and child pornography, to enact and enforce criminal penalties for such acts, and to provide victims with legal and rehabilitative services that are sensitive to their unique needs.⁴³

VIII. International Conference on Population and Development (ICPD), 1994

The International Conference on Population and Development (ICPD) marked a turning point in bringing a range of reproductive issues to

41. *Bringing Rights to Bear: An Analysis of the Work of UN Treaty Monitoring Bodies on Reproductive and Sexual Rights*, page 39.

42. United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.

43. *Id.*, Articles 1, 3, 6, 7, 8, 9.

the international forum. This represented the first time such issues were viewed in a rights framework rather than merely a population control paradigm.⁴⁴ The ICPD Programme for Action noted that “reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents.”⁴⁵

The Programme for Action directly addresses some aspects of sexuality, but does not explicitly characterize them as such. In a section entitled “Gender Equality, Equity, and Empowerment of Women,” the Programme for Action states that countries should “eliminate inequalities among men and women” in part by “assisting women to establish and realize their rights, including those that relate to reproductive and sexual health.”⁴⁶ Most notably, the Programme for Action recognizes that “reproductive health is a state of complete physical, mental, and social well-being, and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and its functions and processes.”⁴⁷ Further elaborating on this definition, the Programme for Action explicitly states that “reproductive health therefore implies that:

- “People are able to have a safe and satisfying sex life;”
- “The capability to reproduce and the freedom to decide if, when, and how to do so;”
- “Right of men and women to be informed;”
- “Right of access to safe and effective family planning methods and reproductive health care;”

44. *Sexuality, Gender, and Rights: Exploring Theory and Practice in South and Southeast Asia*, page 19.

45. International Conference on Population and Development Programme for Action, Paragraph 7.3.

46. *Id.*, Paragraph 4.4.

47. *Id.*, Paragraph 7.2.

- “Importance of sexual health, the purpose of which is the enhancement of life and personal relations.”⁴⁸

Additionally, the Programme for Action recognizes that “reproductive health eludes many of the world’s people because of such factors as: inadequate levels of knowledge about human sexuality and inappropriate or poor-quality reproductive health information and services; the prevalence of high-risk sexual behaviour; discriminatory social practices; negative attitudes towards women and girls; and the limited power many women and girls have over their sexual and reproductive lives.”⁴⁹

The Programme for Action further acknowledges the close relationship between reproductive health and gender relations, as well as emphasizes the importance of “full respect for the physical integrity of the human body.”⁵⁰ The Programme for Action calls for the establishment and realization of women’s sexual and reproductive rights, as well as the elimination of violence against women and the elimination of exploitative practices such as human trafficking and forced prostitution. Such eradication implies not only preventive measures, but rehabilitative measures as well.⁵¹

The ICPD Programme for Action thus represents a significant development in the international jurisprudence on women’s sexuality, particularly with respect to reproductive health and gender stereotypes. However, it is important to note that sexual orientation and other aspects of sexuality are not specifically addressed or acknowledged as being part of basic human rights in this document.

48. *Id.*, Paragraph 7.2.

49. *Id.*, Paragraph 7.3.

50. *Id.*, Paragraph 7.34.

51. *Id.*, Section 4.

IX. Beijing Declaration and Platform for Action (Beijing Declaration), 1995

The Beijing conference was convened with the express purpose of “enhancing further the advancement and empowerment of women all over the world”⁵² and to “intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls.”⁵³ Moreover, this conference affirmed the definition of reproductive health and rights agreed upon at the ICPD, and emphasized the importance of women’s decision-making ability by calling upon countries to reconsider laws that punished women for having illegal abortions.⁵⁴ The report reiterated that full respect for the bodily integrity of the person is a necessary and integral part of protecting sexuality, articulating in Paragraph 96 that:

Human rights of women include their right to have control over and decide freely and responsibly on matters related their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Equal relations between women and men in matters of sexual relations and reproduction, including full respect for the integrity of the person, require mutual respect, consent and shared responsibility for sexual behaviour and its consequences.

Notably, this provision did not discuss sexual rights within the context of heterosexual marriage, as previous international human rights instruments had primarily done.

52. Beijing Declaration and Platform for Action, Paragraph 7.

53. *Id.*, Paragraph 32.

54. Beijing Declaration and Platform for Action, Paragraph 106.

While this paragraph implies an expanded definition of sexuality in international jurisprudence, it was initially the subject of controversy as to the scope and meaning of the language, and was considered by some to be a poor substitute for an explicit provision on sexual orientation.⁵⁵ Currently, many activists interpret Paragraph 96 broadly, as proposing a more comprehensive view of sexuality that includes “control over and decision on sexual matters, and freedom from coercion, discrimination and violence.”⁵⁶ To date, this provision represents the broadest conception of women’s sexual and reproductive rights in an international human rights document.⁵⁷ However, in 2003 and 2004, government delegates to the UN Commission on Human Rights refused to consider a resolution proposed by Brazil to condemn discrimination on the basis of sexual orientation.⁵⁸

Accordingly, the Beijing Platform for Action contains similar provisions to the ICPD Programme for Action, advancing a wide range of strategic objectives and action plans that promote economic and educational opportunities for women and girls; adequate sexual education and the availability and accessibility of health care, including all necessary reproductive and sexual health services, including counselling; elimination of gender-based violence and sexual exploitation; equal political participation and equitable representation in the political arena; and empowerment of girl children and elimination of discrimination at all levels of society.⁵⁹

These legal discourses at the international level have had significant positive impact at the national level. Not only gender discriminatory laws have been changed. The attitude of the judiciary has also changed and new outlook are evident in the process of judicial review of laws as

55. www.sxpoltics.org

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*, Chapter 4.

well. For example, in a landmark decision on marital rape, the Supreme Court held that if an act is an offence by its very nature, it is unreasonable to say that it is not an offence merely because of the person committing the act. It will yield discriminatory result if we interpret that an act committed to any other women is an offence and is not an offence if the same act is committed to one's own wife. Such discriminatory practice is against the provision of the CEDAW Convention and the constitution.⁶⁰

Despite recent developments in the rights-based framework, sexuality is still predominantly addressed implicitly within the context of heterosexual relations, through the right to marry and found a family, to choose a spouse, to practice family planning and to determine the number and spacing of one's children. Many aid programs also place too great a focus on the medical aspects of sexuality, failing to recognize that the mere absence of disease does not necessarily equate with true sexual health.⁶¹ While the HIV/AIDS epidemic is of paramount concern, it is important to recognize that truly protecting sexuality extends far beyond it. Sexuality is inextricably interconnected with all other areas of human life. Thus, establishment and realization of the full range of sexual and reproductive rights require multiple, parallel strategies and mechanisms that account for all implications. Instruments such as CEDAW, the ICPD Programme for Action, and the Beijing Declaration and Platform for Action take comprehensive approaches, but do not fully address all the relevant issues. Sexual orientation, the rights of the transgender population, and the rights to sexual expression and pleasure, among other issues, need to be explicitly and fully recognized.

60. The FWLD challenged the constitutionality of No. 1 of the Chapter on Rape which criminalized only the rape of any woman except one's own wife. See, the Supreme Court Bulletin, 2059 year 11, Vol 5, p 15.

61. www.sxpolitics.org

X. Treaty jurisprudence in Nepal

Nepal's transformation into a democratic polity after 1990 has brought significant positive changes in recognition and implementation of treaty jurisprudence in the country. The Nepal Treaties Act, 1990 provides that in case a clause of any treaty ratified, accessed to or accepted by Parliament is inconsistent to any Nepal law, such Nepal law shall, to the extent of inconsistency, be invalid and the provision of the treaty shall prevail for the purpose of that treaty.⁶²

This grants citizens the right to legal action under international treaties although corresponding domestic legislation may not exist or may contradict the principles of the treaties. Nepal is already a party to 19 international human rights instruments. Nepal has also ratified 2 regional treaties, adopted by the South Asian Association for Regional Cooperation (SAARC), that address components of sexuality: the SAARC Convention on Preventing the Trafficking of Women and Children for Prostitution, and the SAARC Convention on Regional Arrangement for the Promotion of Child Welfare. These Conventions were adopted to combat the problems of human trafficking and sexual exploitation that are particularly serious in the region but yet to be used to recognize sexual autonomy of women in particular.

62. Section 9(1) of the Nepal Treaties Act, 1990.

Nepalese Law on Sexuality

Reproductive health rights consist of a consortium of rights including the right to spousal choice, right to marry, right to have safe sex, and the right to control the timing and spacing of births. The Interim Constitution of Nepal (2007) contains a separate Article that recognizes that women's rights, including reproductive rights, are fundamental.⁶³ This is the first time in Nepal that such specific right has been treated as a fundamental right. In order to materialize this right, specific law and programs must be launched so women can exercise their rights.

This chapter examines the relevant legal provisions and judicial interpretations within the Nepalese legal systems that directly and indirectly promote or infringe these constitutionally-protected rights. Though the issues are interrelated, this study divides them into categories: privacy and confidentiality, marriage and family, property rights, information on sexual matters, sexual crimes, abortion, citizenship, employment, and sexual identity. In each section, our analysis recognizes the legal changes that have occurred, recognizes gaps and weakness in the law, and proposes necessary steps to achieve the ultimate goal of equality. Because even the best law is worthless if not effectively enforced, we also focus on how law enforcement and other cultural forces can successfully protect these important rights.

63. Article 20 (2) of the Interim Constitution of Nepal, 2007 reads as "Right of Women: (2) Every woman shall have the right to reproductive health and other reproductive matters."

I. Privacy and Confidentiality

Fundamental Right to Privacy

Sexuality is closely linked to privacy of a person. The protection of one's privacy and confidentiality is essential for protection and enjoyment of the right to sexuality. The Interim Constitution of Nepal (2007) makes privacy a fundamental right.⁶⁴ Within the right of privacy, the constitution expansively protects privacy both of person and of character. This expansive definition is necessary in a society where the character of a person, especially of women, is constantly questioned from a sexual point of view.

While the constitution declares that privacy is "inviolable," the legislature has failed to enact a separate law that actually protects privacy. Without enactment of such a law, mere constitutional declaration cannot protect this fundamental right. Women may be subject to humiliating and degrading treatment if their personal lives are revealed. Moreover, fear of exposure can deprive women of access to the legal system.

Virginity Tests

The importance of privacy is highlighted in an almost-tragic property dispute case.⁶⁵ The lower court in this case had ordered a woman to endure an intrusive and humiliating virginity test to determine if she was married. If the test had revealed that the woman was not a virgin, then she would have been deprived of any share of a partition of property. She refused and appealed the case to the Supreme Court. In a celebrated and trend-setting opinion, the Supreme Court invalidated the lower court order. The Supreme Court rightly

64. Article 28 of the Interim Constitution of Nepal, 2007 reads as "Right to Privacy: (1) Except on the circumstance as provided by law, the privacy of the person, residence, property, document, statistics, correspondence and character of anyone is inviolable."

65. *Annapura Rana v. Ambika Raja Laxmi Rana*, NKP 2055 (1998), Vol. 40, p. 476.

distinguished between marriage and virginity. Moreover, the Court found that the genital examination would violate the woman's right to privacy. Whether a person does or does not have sex with the person of her choosing is a "matter of private conduct of the person."

In-Camera Judicial hearings

The judiciary understands that privacy rights must be balanced against the right to information. The Fourth Amendment to the District Courts Rules (1995) achieves this balance by providing for in-camera hearings in cases relating to children, rape, trafficking, maintenance of the relationship, and divorce.⁶⁶ During the hearing of such cases, only the concerned lawyers, experts, accused persons, victims and his/her guardians, policemen and the court staff and the persons allowed to appear by the bench may be present. The Appellate Court Rules contain a similar provision. Such provisions ensure the privacy of sensitive matters without compromising the integrity of the judicial system.

In one of the recent cases,⁶⁷ the Supreme Court issued a directive order in the name of the government to enact appropriate law to protect confidentiality of women and children and other parties of the case in the sensitive cases like violence, HIV infection, sexual offences or other cases which the court trying the offence deems appropriate. In this decision, the Supreme Court also issued some guidelines as transitional measures until the specific law on the subject is enacted. These guidelines require all legal authorities trying cases to maintain confidentiality of identity and other details of women, children and HIV infected people who are involved as parties of the cases involving right from filing of the case to the execution of the judgement. The

66. Rule 46B (1) of the District Court Rules, 1995.

67. Sapana Pradhan Malla on behalf of FWLD v. GoN, Writ No. 3561 of 2063, (decided on 2064-9-10)

guidelines also direct identify the parties involved in such cases through code, symbol, alphabet or word so that their actual identity may not be disclosed.

Medical Code of Ethics

The medical community also self-regulates the privacy of patients as a matter of professional responsibility. The Code of Ethics of the Nepal Medical Council requires medical practitioners to ensure the confidentiality of information confided to them by patients.⁶⁸ The code of conduct also provides for privacy of patients by prohibiting doctors from disclosing any matter about his/her patients except as prescribed by the law.⁶⁹

Lawyers code of conduct

The law requires the lawyers to maintain confidentiality of the information given by the client or his/her power of attorneys or the information he/she has acquired or the advices he/she has given to the clients without the written consent of the client.⁷⁰ This duty of the lawyers is extended even after termination of his/her appointment as lawyer.

II. Marriage and Family

Marriageable Age

The law provides that the marriageable age of a boy or girl is twenty years old.⁷¹ This is a change from earlier laws that provided a different age for boys and girls. Before the Eleventh Amendment to the country code, the marriageable age was eighteen for a girl and twenty for a

68. No. 1 of the Code of Ethics, Nepal Medical Council, January 2001.

69. No. 3.2 of the Code of Ethics, Nepal Medical Council, January 2001.

70. Section 45(1) of the Evidence Act, 2031 (1974)

71. No. 2 of the Chapter on Marriage, the country code, 1963.; Section 4(3) of the Marriage Registration Act, 2028(1971).

boy. With parental consent, a girl could marry at sixteen and a boy at eighteen. Various human rights organizations opposed this discriminatory law, because it was premised on the procreative role of women in a marriage to the exclusion of all other considerations. The new law views marriage as a partnership of equals.

Right to Remarry

The right to marry includes the right to remarry in certain circumstances like after divorce or the death of a spouse. However, the prevailing religious and cultural values prevent a widow from remarrying. No such stigma exists for a man who chooses to remarry. The law does not address this issue, but when society prevents a woman's remarriage, it stifles her sexual autonomy and perpetuates the belief that a woman is the property of her husband. Fortunately, the process of societal awareness has been gradually changed this oppressive imbalance. More still needs to be done to remove the stigma from women.

Giving birth not an indicator of marriage

The Supreme Court has had a progressive attitude on matters of marriage and sexual relationships. In one celebrated case, the court held that giving birth to a child does not necessarily indicate that the mother is married.⁷² In this case the Supreme Court also rejected the conventional view towards marriage and accepted the "living together" concept which is in practice in the western world long time back. The court held the view that individuals could live together as boyfriend/girlfriend and have a child which does not necessarily entail marriage. The Court also held that having sexual relationship alone could not be considered as marriage. With this ruling, the frontiers of women's right to sexuality expanded. This case is remembered for the court's liberal and realistic attitude that matched the needs of the time.

72. Annapura Rana v. Ambika Raja Laxmi Rana, NKP 2055 (1998), Vol. 40, p. 476.

Institution of marriage to be respected

The Chapter on Husband and Wife provides that an extra-martial relationship is a ground for divorce.⁷³ When a person enters into marriage, the law requires to respect relationships, because the institution of marriage must be honoured. As an extra-marital relationship offends this institution, the law does not tolerate it. If either a man or a woman engages in an extramarital affair, the other spouse can demand a divorce.

Custody of minor children denied

In case of custody of children, the law provides for first right of the mother to gain custody of a minor (until the age of 16 years) and casts duty on the father to take custody if the mother is unwilling to it.⁷⁴ However, if the father of an 8-16 year old child dies or moves abroad, and the mother remarries, then the father's family gets first priority to gain custody of the child. Only if the father's family cannot support, the child can the mother gain custody.⁷⁵ The mother does have first priority to take the custody of her children if they are under eight years old, even if she remarries. A mother should always have first priority over her own children. This law must be amended to reflect a mother's right to her children. The law that denied women's right to child custody in case of remarriage under Chapter of Husband and Wife is repealed.

Bigamy legal in certain conditions and legally a crime but marriage is not void

Marriage is a union between two adults, so a person cannot have more than one spouse at one time. However, in Nepal bigamy is illegal and it is a crime with punishment of imprisonment but the marriage is not void.⁷⁶ In Nepal, a woman can never have more than one husband.

73. No. 1 of the Chapter on Husband and Wife in the Country Code, 2020 (1963).

74. No 3 of the Chapter on Husband and Wife, the Country Code, 1963.

75. No. 3 of the Chapter on Paupers, the Country Code.

76. No. 9 of the chapter on Marriage, the Country Code, 1963.

However, a man is allowed to have more than one wife if his first wife suffers from an incurable venereal disease, if she is cannot walk, if she is blind in both eyes, or if a government-recognized medical board proves that the wife is infertile.⁷⁷ The only limit on the right to bigamy is the requirement of consent of the wife.⁷⁸ There is often no way to know if the consent is freely-given, because women often lack the power to disregard their husband's wishes. After strong protests by various civil society and women's rights groups, a woman's failure to deliver a child within ten years of marriage is no longer a valid ground for divorce.⁷⁹ The other discriminatory and irrational grounds for bigamy must be overturned immediately.

Additionally, consent of the woman is not needed in all cases. If the wife is living apart from her husband and already taken her share of property, then the law assumes her consent. This provision forces a woman to choose between her conjugal right and her property right. This systematically ignores a woman's sexuality.

Despite the illegality of bigamy, the law recognizes that it occurs by making all co-wives equal coparceners of a polygamous husband's property.⁸⁰ This provision recognizes that men do break the law and attempts to fairly distribute the property between the victimized wives. However, the effect of such a provision is that it lends credibility to bigamy, thereby giving wider sexual freedom to men to their wives' detriment. Moreover, though illegal, a polygamous marriage cannot be declared invalid. The law must be amended to make such polygamous marriages null and void *ab initio*.

77. No. 9 of the Chapter on Marriage, the Country Code.

78. No. 9A. of the Chapter on Marriage, the Country Code.

79. Sub-Clause (3) (1) of Clause (1) of Section 2 of the Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063 (2006)

80. No. 4 of the Chapter on Partition of Property, the Country Code, 1963, which provides, " In case anyone has co-wives only as coparceners, all co-wives shall be entitled to equal share of property of husband as per law."

III. Property Rights

Changing property rights law that re-enforces right controlling sexuality

When property rights law discriminates against women, it adversely affects the exercise of women's fundamental rights, including her sexuality rights. With the efforts of civil society organizations and intervention by the judiciary after public interest litigation cases, property law has been significantly reformed. Now daughters may inherit paternal property as heirs;⁸¹ widows are provided full right to inheritance;⁸² a wife's property right vested upon marriage and she no longer has to wait the age of 35 and 15 years of marriage;⁸³ the law establishes duties for the upbringing of both daughters and sons;⁸⁴ and the wife gets a full share of the marital property at the time of divorce.⁸⁵

In the past, if a wife wanted to enter into a second marriage, she had to return the property from the earlier husband to the family of the husband. This particular provision was enshrined in the law to stop a woman from receiving double property i.e. from parents and from husband and it would be against the right to equality. Additionally, a woman who remarried was not allowed to keep custody of her children from the first marriage. This put women in the tortuous position of choosing between the children she loved and the man she loved. Various human right organizations vehemently opposed this proviso for being too restrictive of woman's autonomy. As a result, this provision was repealed.

81. No. 1 of the Chapter on Partition of Property, which reads, "After commencement of this No., each of the father, mother, husband, wife, son and daughter shall be entitled to one share of the family property subject to the provisions of other Nos."

82. No 12 of the Chapter on Partition of Property,

83. No. 10 of the Chapter on Partition of Property

84. Section 4 of the Children's Act, 1990.

85. No. 4A of the Chapter on Husband and Wife, the Country Code, 1963.

In one case⁸⁶, a petitioner challenged the constitutionality of Nos. 4A, 4B and 4C of the Chapter on Husband Wife in the Country Code that requires the husband to provide a share of property or maintenance cost to the wife in the event of divorce. The main contention of the petitioner was that such law offends the right to equality guaranteed by the constitution and unreasonably discriminates against the husband. The petitioner also argued that it is unnecessary to provide a share or maintenance cost to a divorced wife, as the relationship between them no longer exists. Furthermore, the petitioner claimed that if a woman received a share of property from every husband she marries to, then she could amass unlimited wealth, which would be unfair and inappropriate. The petitioner also demanded a provision that would require the wife to provide maintenance to the husband if the husband does not have the means to livelihood and the wife has the capacity to pay.

The government defended the law arguing that it follows a previous court order to achieve gender equality and does not offend the husband's rights. The government also argued that the patriarchal value system has imposed immense discrimination against women, so women lag far behind their male counterparts in every walk of life. The amended law envisaged bringing macro-level gender equality, and the court should not question the legislature's judgment. Specifically, this provision stops a husband from exploiting his wife by granting her an entitlement in their property.

The Supreme Court found that the disputed provision did offend the right to equality; however, it refused to invalidate the law. Rather the court issued a directive order requiring the government to conduct massive consultation and research on the topic with relevant

86. Shyam Krishna Maskey v. GoN, Decision No. 7445, Nepal Kanoon Patrika, 2061; p. 1254.

stakeholders, and then to enact a more appropriate bill. The decision advances women's property and sexuality rights, without compromising ideals of pure gender equality.

The *stri amshadhan* refers to the property a woman acquires in her capacity as a daughter or as a wife. The property given to a woman by her parental or maternal relatives and friends is known as *daijo* and the property given by the husband or the relatives in the husband's side is called *pewa*.⁸⁷

In the past, woman had only limited property rights because though she could enjoy and use all of such property, she could not dispose of it on her own.⁸⁸ The law limited the property rights of Nepalese women by allowing her to dispose of only half of the immovable *srti amshadhan*. To dispose of the remaining half, she would need the consent of her husband or her children.⁸⁹

FWLD and other organizations conducted a series of advocacy campaigns including mass meetings and street demonstrations demanding for equal property law and filed public interest petitions at the Supreme Court challenging the law. As a result, Eleventh Amendment to the Country Code significantly reformed the discriminatory provisions against women.

Petitioners challenged the constitutionality of a law (No. 2 of the Chapter on Women's Exclusive Property) that required women to obtain the consent of parents or children if she was to dispose more than half her immovable property. Men of course were allowed to dispose of property without such restriction. The Supreme Court found the law infringing women's property rights and declared the restriction *ultra vires*.⁹⁰

87. No. 4 of the Chapter on Women's Exclusive Property, the Country Code, 1963.

88. *Ibid.*

89. See, No. 2 of the then Chapter on Srti Amshadhan in the Country Code, 1963.

90. *Prakashmani Sharma v. GoN Writ No. 34/2061*. (Decided on 2062-8-30).

Accordingly, the law has been amended now allowing woman to dispose of such movable and immovable property on her own.⁹¹

Similarly, the Country Code of 1963 deprived women of property rights by granting unmarried daughters under the age of 35 a half-share of parental property; other daughters got nothing.⁹² Furthermore, if the daughter later married, she had to return her half-share of property. This law controlled both property and sexuality rights. It forced a woman to choose between marriage and a property share. The Supreme Court declared this law (No. 12A. of the Chapter on Partition of Property) *ultra vires*.⁹³

FWLD filed a Public Interest Litigation (PIL) in the Supreme Court challenging No. 7 of the Chapter on Women's Exclusive Property (Stri Amshadhan) of the country code that provides "any woman who transfers her property other than her exclusive private property (daijo and pewa) to any person and if she gets married to the same person who receives such property, such transaction shall be void and the lawful claimant shall be entitled to get such property returned." There was no such provision for men. This provision violates women's property right, equality right, constitutional and legal right and ultimately, the right to sexuality. Declaring the law as discriminatory, the Supreme Court struck down the law on 23 November 2006.

Even after the success of the Eleventh Amendment, there is still discrimination in property law. A married woman is not entitled to a share in the parental property, but a married man is entitled to.⁹⁴ Similarly, the Chapter on Intestate Property places married daughters much behind in the line of succession.⁹⁵ The government must

91. No. 2 of the Chapter on Women's Exclusive Property, the Country Code, 1963.

92. Sapana Pradhan Malla *Inheritance Rights of Nepalese Women: Journey Towards Equality*; FWLD and IWRAW-AP; p.9

93. Meera Dhungana for FWLD v. GoN, Writ No, 110/059.

94. No. 1A of the Chapter on Partition of Property, the Country Code.

95. No. 3,6,7,9 and 10 of the Chapter on Intestate Property of the Country Code, 1963.

immediately amend to these discriminatory provisions, so that women may finally have an equal opportunity to succeed in Nepal.

IV. Information on Sexual Matters

Access to current and correct information on sexuality issues is crucial for the exercise and enjoyment of sexual rights. Because discussing sexual matters is taboo, ignorance abounds and there are many misconceptions about sexuality. Many people are not aware of their sexuality rights. Without knowledge, parents are uncomfortable or incapable of teaching their children about sexuality matters. Sex education in school curricula has helped make up some of the difference, but there is still a lack of necessary information.

The laws in Nepal are not conducive for free flow of information on sexuality. Because sexuality is closely associated with public decency and morality, the dissemination of relevant information involves perennial questions of law and morality.

Several laws that regulate obscenity suffer from a lack of clarity. The Electronic Transaction Act (2063), for example, prohibits publication or exhibition in the electronic media of any material that is against public moral or decency,⁹⁶ and depicting sexual matters is considered unacceptable. The National Broadcasting Act (1992) provides, *inter alia*, that advertisements may not contain obscene materials.⁹⁷ The Press and Publication Act prohibits publication of any material that offends the good behavior, morality and social dignity of general people.⁹⁸

96. Section 47(1) of the Electronic Transaction Act, 2063 (2006).

97. Section 15 (1) (b) of the National Broadcasting Act, 1992.

98. Section 14 (e) of the Press and Publication Act, 1991.

Because terms like “obscene” or “moral” have different connotations for different people, these ambiguous laws may be used to censor sexual information in various media. Without clarification, these laws may censor such as advertisements for contraceptives, information on medical services, or treatments for sexually-transmitted infections. The legislature must clarify such laws to explicitly allow dissemination of materials on sexual education.

V. Sexual Crimes

Rape

The recently amended new law defines rape as sexual intercourse with any woman without her consent, or a sexual intercourse with a girl below the age of sixteen years with or without her consent.⁹⁹ While the old law left room for courts to exclude certain acts as rape, the new law clearly includes slight penetration of penis into vagina. Whereas, the old definition did not consider marital rape as an offence, the new law prohibits rape against any woman, including one’s wife. Though not perfect, the new law is a vast improvement over its predecessor.

Marital Rape

The impetus for change came from a petition by FWLD, which challenged the constitutionality of the definition of rape in the then law that gives unfettered immunity to a woman’s husband.¹⁰⁰ The

99. 1 No. Whoever does have sexual intercourse with any woman without her consent or with a girl child below the age of sixteen years with or without her consent, it amounts that the person has committed rape of such woman or girl child.

Explanation:For the purpose of this Chapter, (a) The consent acquired through fear, threat, duress or coercion or by subjecting her to an undue influence, fraud or by use of force or kidnapping her or making her a hostage shall not be deemed to be the consent. (b) The consent acquired in the state of unconsciousness shall not be deemed to be the consent. (c)The partial penetration of penis into vagina shall also be deemed to be the intercourse for the purpose of this No.”

100. Meera Dhungana for FWLD v. GoN of Nepal; Supreme Court Bulletin 2059 (2002), No. 5, p. 13.

challenged rape law provision only outlawed rape against “a girl, widow, or other’s wife,” thereby permitting a husband to defile his own wife.¹⁰¹ Citing fundamental rights enshrined in the constitution, international human rights instruments, the Supreme Court issued a Directive Order requiring the government to modify the law. As a result, the government enacted the Gender Equality Law in November 2006, which included a penal provision for marital rape. The same law allowed marital rape to be a valid ground for divorce.¹⁰²

Lingering elements of misogyny in rape laws

Misogynists think rape is a crime only because it deprives a woman of her chastity and purity, but modern people understand that rape is a crime because it is violent, abusive, and hateful. Unfortunately, the law in Nepal still reflects the misogynist view of rape. The law prioritizes chastity over the right to consent to sexual intercourse. For example, in order to protect her chastity, a woman can use deadly force against her assailant and she will not be liable for the resulting injury or death.¹⁰³ This right to defend oneself from rape must be included in the penal code, but it should be based on self-defence, not chastity-defence. Whenever confronted with the hate and violence of rape, a woman should have the right to defend herself. Chastity has nothing to do with this right.

Minimal punishment for marital rape

Though marital rape is now criminalized, the applicable punishment fails to recognize the severity of the crime. Rather than imposing a sentence equal to other rapes, the penal code imprisons marital rapists for a meagre three to six months. Those accused can make bail

101. No. 1 of the Chapter on Rape in the Country Code, 1963.

102. An Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063 (2006), Section 12 (2) and 3 (1) (b).

103. No. 8 of the Chapter on Rape, Country Code.

immediately and abuse their wives even more. The new law, while a major step forward, fails to protect the sexual autonomy and vulnerability of women. Consequently, women's rights groups have filed writ petitions in the Supreme Court challenging the provision of punishment as insufficient in addressing women's vulnerability. The main claim made in these petitions is that the three to six month imprisonment for marital rape is discriminatory and irrational. The petitioners have demanded for equal punishment of rape and marital rape. Moreover, the petitioners have requested the court make interim relief available, such as the costs for maintenance while the case is pending. The Supreme Court has yet to decide these cases.¹⁰⁴

Lower punishment based on victim status is unconstitutional

The law used to provide a lower punishment for raping a prostitute; however, this discrimination was successfully challenged in court.¹⁰⁵ The petitioner challenged its constitutionality, because it discriminated against a group of people because of their so-called status as prostitutes. The Supreme Court held that rape is a crime against women and the physical and psychological torture that a woman victim faces is the same irrespective of the woman's status — such as whether she is married or unmarried, whether she is underage, or whether she is a prostitute. A prostitute is also a woman and is entitled to enjoy all the rights granted to a human being.

The Supreme Court has further held that rape is a crime that directly violates the human right to self-determination and personal liberty. Rape does not only affect the physical, mental and family life of a victim but also affects her dignity and existence. It is a crime not only

104. Jit Kumari Pangei v. GoN (Writ No. 0035 of 2063); Radha Budhathoki (Sodari) v. GoN (Writ No. 0043 of 2064).

105. Sapana P. Malla for FWLD vs. HMG/Nepal, Writ No. 56/2058, Date of decision: 2059.1.18 (May 2, 2002), Publication of Judgment relating to Human Rights (special issue), Kathmandu, Supreme Court, pp. 144-151.

against the victim but also against the whole society. A murder ends the physical structure of a person, but rape is a crime, which disrupts physically as well as psychologically.¹⁰⁶ With this, the court declared the impugned provision unconstitutional.

Given the clear language from the Supreme Court invalidating the low punishment for the rape of a prostitute, the legislature cannot justify having a lower punishment for raping one's wife. Rape statutes must impose the same punishment regardless of the status of the victim.

In *Sapana Pradhan Malla v. GoN*,¹⁰⁷ the Supreme Court held that sex work is like any other profession, and that no discrimination could be made on the basis of sex work. In this case, the Court also held that it is not reasonable to punish a crime differently only on the basis profession or character.

Following the decision of the Court, the recently enacted Trafficking in Person and Transportation (Control) Act, 2064 (2007) instituted criminal penalties for causing someone to be engaged in prostitution by receiving or not receiving a benefit of any type¹⁰⁸ and for having sexual intercourse with a prostitute.¹⁰⁹ The Act is silent in regard to prostitution and thereby accepts the norms of decriminalization.

Protection from violence against women (VAW)

The relationship between VAW and sexuality is an intricate one. Violence controls and limits the parameters of an individual's sexuality and can corrupt sexuality with fear and shame.¹¹⁰ In Nepal, the desire to control

106. Ibid.

107. Ibid.

108. Trafficking in Person and Transportation (Control) Act, 2064 (2007), Article 4 (1) (b).

109. Trafficking in Person and Transportation (Control) Act, 2064 (2007), Article 4 (1) (d).

110. Background paper for the study workshop on Sexuality and Violence against Women, July 25-26, 2004, Jakarta, Indonesia, organized by Asia Pacific Forum for Women, Law and Development, Forum Asia and Komnas Perempuan

or exploit women's sexuality is a major cause of growing incidents of VAW. The Interim Constitution of Nepal (2007) prohibits and punishes physical, mental or any other form of VAW and it declares that such acts shall be punishable by law.¹¹¹

Meanwhile, a Bill regarding domestic violence that would enact this constitutional promise has been pending for a long time. While government and lawmakers ignore their duty, prosecutors must attempt to punish the atrocities committed against women under various like the Public Offences Act. The constitutional guarantees are meaningless until parliament follows through with comprehensive VAW legislation.

Protection from trafficking

Trafficking of persons violates a multitude of human rights, including the right to sexuality as the trafficked women and girls are forced into sex work. In the past, the law against trafficking of women and children was weak as the buyer was exempt from punishment. Recently the Human Trafficking Act (2007) extended the definition of trafficking to include the offence of transportation for the purpose of trafficking. With this extended definition and other support measures, this new Act helps to control human trafficking and affords needed support and care for the victims.

Failure to address migration and trafficking

Despite the new law for combating trafficking, trafficking of women still continues for many reasons. One of the major causes is the government's failure to respond to the complex issues associated with migration for work and trafficking.¹¹² The girls at the border crossings

111. Article 20 (3) of the Interim Constitution of Nepal, 2007 reads as "Right of Women: (3) No physical, mental or any other form of violence shall be inflicted to any woman, and such an act shall be punishable by law."

112. Interview with an official engaged in monitoring of anti-trafficking law enforcement in Nepalgunj, one of the bordering towns of Nepal to India where he admits that the incidents of young women going abroad through the route of India and in the name of employment are on the rise and they are helpless to control this particular mode of trafficking.

with India argue with the authorities and surveillance organizations. The girls claim they desire to go to India to seek legitimate employment. With this adamant attitude, the girls often paralyze the activities of the Government. Officers in law enforcement and border agents need more training to deal with these difficult scenarios.

Child Paedophilia

The law prohibits sexual exploitation of children as it provides that any unnatural sex with a minor amounts to an aggravated form of rape.¹¹³ The law also provides that a child may not be involved or used in an immoral profession.¹¹⁴ However, the law does not define the term 'immoral profession'. The use of such value-laden terms in law may create uncertainty in the application of the law.

Order to eliminate various forms of cultural violence

Putting women in solitary and unhygienic places like cowsheds during their menstrual and delivery periods (locally known as *chaupadi*) is a pervasive cultural practice in some of the remote districts of mid- and far-western Nepal. Expert reports suggest that this practice significantly increases the risk of deadly infections by depriving these women of hygienic conditions and nutritious foods. Several NGOs filed a PIL at the Supreme Court to direct the government to outlaw this practice. The Supreme Court issued a Directive Order that required the government to declare *Chaupadi* as malpractice based on superstitious beliefs, to submit a report to the court on the impact and adverse consequences of the practice, and to immediately enact a new law to end the practice.¹¹⁵

113. No. 9A. of the Chapter on Rape, Country Code.

114. Section 16 of the Children's Act, 1990.

115. Writ No. 3303 of the year 2061

In a similar case, the court issued a Directive Order requiring the government to launch a massive awareness campaign to stop the exploitation of women for practicing witchcraft. These initiatives help create an atmosphere conducive for women to exercise their sexuality rights.¹¹⁶

Adultery

Having sex with the wife of other person with knowledge that she is already married amounts to adultery.¹¹⁷ The law prohibits adultery except in the following circumstances:¹¹⁸

- If adultery is committed with the wife of a person having more than one wives
- If adultery is committed with a woman who is entitled to seek divorce under the law
- If adultery is committed with a woman who is entitled to get the marriage void under the law

In one case, the husband, an ex-army man, filed a case against the wife for committing adultery by not remaining chaste and faithful towards him. The wife and the man, whom she married, claimed that they were innocent. The Supreme Court upheld the lower court's decision of conviction for adultery on the basis of the statement of an eyewitness who stated that the couple had committed adultery and that they admitted the guilt at a public inquiry held in the village.¹¹⁹

116. Advocate Resma Thapa and others v. GoN (Writ No. 2891 of the year 2058)

117. No.1 of the Chapter on Adultery, Country Code.

118. No.3 of the Chapter on Adultery, Country Code.

119. Battisuba v. Min Prasad Gurung (2057) Criminal Appeal No. 33/ decided on 2060-10-26

Sexual Harassment

Sexual harassment is prevalent throughout Nepal, but there was no law prohibiting it until the Supreme Court ordered the government to take “necessary steps” and initiatives to enact appropriate laws relating to sexual harassment.¹²⁰ As a result, the Gender Equality Law amended the Chapter on Intention to Sexual Intercourse in the Country Code to penalize sexual harassment against women. The new law provides that whoever, without consent of a woman, touches or tries to touch her sensitive organ, removes or tries to remove her undergarment, takes her to any solitary place in an unnatural manner, causes her to touch or catch his/her sexual organ or uses any sexually motivated words or symbols or shows her such photographs or drawings, teases or harasses her with sexual motives or behaves with her in an unnatural way or catches her with the motive to have sexual intercourse, it amounts to be sexual harassment.¹²¹

While this provision is a major step forward, it fails to recognize other forms of sexual harassment such as fostering hostile working conditions, psychological pressure, or unfair terms and conditions of services. The law should also recognize modern forms of stalking that amount to sexual harassment, such as derogatory or vulgar text messages, emails, and faxes. Furthermore, the law must protect the brave victims who report incidents from retaliation or further humiliation. Myriad women have been victims of sexual harassment, but they never report due to fear and shame. Until a serious effort is made to stop sexual harassment, the marginalization of women will continue, especially in the workforce.

120. Sharmila Parajuli, Shova Shah and Others v. His Majesty's Government, Date: 2060.11.24, Writ: 3434 of 2002

121. An Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063 (2006), Section 11.

Sexual abuse or violence against men not recognized

The legal provisions regarding to rape assume that only women can be the victims of rape.¹²² There are no mechanisms that address the sexual abuse or violence that men face. Similarly, the recently enacted law against sexual harassment only addresses harassment against women and not against men.¹²³

VI. Abortion

Right to carry out abortion in certain circumstances

The Eleventh Amendment to the Country Code of 2002 legalized abortion under certain circumstances. Abortion had been illegal, but this led to innumerable unsafe abortions and a gross violation of women's rights. Now abortion is legal up to 12 weeks for all pregnancies; up to 18 weeks of pregnancy where pregnancy is a result of rape or incest; and up to full term of pregnancy if the life of the woman would be at risk, if her physical or mental health would be affected, or if a disabled child could be born.¹²⁴ In all cases, the abortion cannot occur without the woman's consent, thereby allowing a woman to control her own body.

Though abortion laws have been liberalized, they still exist under the rubric of murder, as the law is found under the Chapter on Homicide in the Country Code. Abortion should be viewed as a right, not as a limited exception to murder. Placement in the code can lead to further stigma and victimization of women.¹²⁵

122. No. 1 of the Chapter on Rape in the Country Code, 2020 (1963).

123. An Act to Amend Some Nepal Acts for Maintaining Gender Equality, 2063 (2006), Section 11.

124. No. 28 B of the Chapter on Homicide of the Country Code, 1963.

125. No. 28 A of the Chapter on Homicide of the Country Code, 1963.

An attempt was made to cripple the right of women to seek safe abortion by filing a case challenging the abortion law on the ground that the law does not require a husband's consent before the abortion occurs.¹²⁶ However, very recently the Supreme Court quashed the writ petition holding the view that if spousal consent is required for exercising abortion right, the right to abortion would be meaningless.¹²⁷

VII. Citizenship

Women cannot provide citizenship to her husband

Even though the Interim Constitution ensures equality and non-discrimination as fundamental rights, the Interim Constitution (like the previous Constitution of 1990 and the Nepal Citizenship Act) does not allow a Nepali wife to transfer citizenship to her foreign husband.¹²⁸ This discrimination undermines a women's right to sexuality and negatively affects matrimonial life by disturbing their decision to live together.

Denial of visa to foreign husband

In an immigration case involving the foreign husband of a Nepali woman,¹²⁹ the petitioner challenged the constitutionality of an Immigration rule that allowed a residential visa to a foreign woman married to a Nepalese man but did not allow the same to a foreign husband of a Nepalese woman. The petitioner argued, *inter alia*, that the discriminatory rule denied her the right to live with her family and to have sexual intercourse. The government argued that the Constitution only confers the right to equality upon Nepalese citizens, and thus does not apply to foreign nationals.

126. Achyut Prasad Kharel v. GON/Nepal, Writ No. 3352, dated 2061/9/21.

127. *Ibid*, the case was decided on August 4, 2008.

128. Article 8(6) of the Interim Constitution of Nepal, 1990; Section 5(1) of the Nepal Citizenship Act, 2063 (2006); Rule 5 of Nepal Citizenship Regulation 2063 (2006).

129. Meera Gurung v. Department of Immigration; (Decision No. 4858 2051 (1994) Supreme Court).

The Supreme Court held the visa requirements seemed to give unequal and unfavourable treatment to foreign citizens who married a Nepali woman, because it explicitly depended on the sex of the parties. The Court required the Department of Immigration to reconsider the visa application without this discriminatory provision. Because of a technicality, the court did not invalidate the old law, but required the Department of Immigration to make appropriate arrangements until new Immigration Rules were framed.

Women could transfer citizenship to children in limited circumstances

The children born to foreign husband of a Nepali woman may not acquire citizenship through mother in all cases. Such children may acquire citizenship only if they are born in Nepal and have been living in Nepal and they have not acquired citizenship from their father's nationality.¹³⁰ Children of a Nepali man and foreign wife are not affected by this discriminatory provision. This law undermines the love and affection of motherhood and it controls the sexual and reproductive choices of a woman.

Court's validity to discrimination in citizenship

Because the discrimination against citizenship is enshrined in the constitution, women have found little support with the courts. In a case challenging the constitutionality of the discriminatory citizenship rules,¹³¹ the Supreme Court had a very restrictive and conservative attitude. The court argued that the provisions on citizenship of Part 2 of the Constitution are special provisions and the provisions vis-à-vis the right to equality stipulated in Article 11 of Part 3 of the Constitution are general provisions. As a matter of interpretation, general provisions

130. Article 8(7) of the Interim Constitution of Nepal, 2007.

131. Writ No. 1379 of the year 2048 (1992), the Petitioner Meena Kumari Tilija et.al. vs. Immigration Department, His Majesty's Government et.al.

cannot control special ones. Moreover, the court held that the constitution overrides even international conventions that Nepal has ratified. The courts are powerless to overturn this rule, so the people and the legislature must demand a constitutional change.

VIII. Employment

Only single women are allowed to join the armed force

The Military Police Regulation allows only unmarried or single (widowed) women to join the armed-police service.¹³² This law violates the right to sexuality of women by requiring them to remain unmarried simply to join the armed police. This law is gender discriminatory as it does not restrict married men or widower to join the armed force. FWLD has filed a case at the Supreme Court challenging the law as it violates the right to equality and non-discrimination and the right to employment and demanded for declaring the law invalid.¹³³

Validity to denial of foreign employment to women

There was a law that required the consent of guardian of woman and approval of the government to send the woman for foreign employment; but no such requirement was there in the case of a man. When this provision was challenged in the Supreme Court claiming it being discriminatory against women, the Court held that the provision was constitutional and consistent with the constitutional right to equality, right to profession, and right to property. Furthermore, the Court stated that the said provision provide special protection to women seeking foreign employment. According to the Court, the purpose of this provision was not to restrict women from finding employment but rather, to protect women from “unwanted and unnecessary hassles

132. Rule 4 of Armed Police Regulation (first amendment), 2004.

133. Writ No. 0001 of the year 2064.

and harassment” she might face in foreign nations. The provision’s purpose is to protect women from potential exploitation and abuse by foreign employers.¹³⁴ But now, the newly enacted Foreign Employment Act, 2006 has eliminated such a clause and women are no longer discriminated in the name of ‘protection.’

IX. Sexual Identity

Sexual identity is a crucial element of an individual’s sexuality. The laws in Nepal classify a human being either as a male or as a female. The laws do not recognize that a person may be lesbian, gay, bisexual, transgender, intersex (LGBTI) or a third-gender. Failure of the law to recognize these individuals leads to a crisis of sexual identity and a violation of human rights. Time and again, homosexual activities have been treated as offensive to public decency and morality.

Right to non-discrimination excludes discrimination based on sexual orientation

Ensuring equality in every field is essential for protection, promotion and enjoyment of every right including the right to sexuality. The Interim Constitution of Nepal (2007) recognizes the right to equality as a fundamental right. The Interim Constitution provides that all citizens are equal before the law. No person shall be denied the equal protection of the law and no discrimination shall be made against any citizen in the application of general laws on the grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any of these.¹³⁵

134. Adv. Sabin Shrestha and Others v. His Majesty’s Government, Date: 2058.5.20, Writ: 2784.

135. Article 13 (1) and (2) of the Interim Constitution of Nepal, 2007 reads as “Right to Equality: (1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws. (2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any of these.”

However, this provision does not prohibit discrimination based on sexual behaviour or orientation. Though equality is guaranteed, sexual behaviour or orientation should be included in the enumerated categories to ensure protection, especially in a society like Nepal where homosexual activity is not recognized on par with heterosexuality.

Same-sex marriage not recognized

The Chapter on Marriage in the Country Code¹³⁶ and the Marriage Registration Act¹³⁷ provides that marriage can be solemnized only between a man and a woman. As a result, conjugal relationships and sexual intercourse are legally possible only between members of the opposite sex, excluding scores of homosexual couples from the benefits of marriage and from living their lives fully.

Homosexuality considered unnatural

The Chapter on Bestiality in the Country Code states that acts of unnatural sex are prohibited and punishable with up to one-year imprisonment.¹³⁸ These provisions can be used to prosecute people engaging in homosexual acts. The Draft Penal Code also proposes to penalize even consensual sexual relations, other than between a man and a woman.¹³⁹ These provisions compel homosexuals to suppress their innate feelings and move on according to what the law orders them.

“Ban the Organization of Homosexuals”

A case has been filed in the Supreme Court to ban the activities of an organization, the Blue Diamond Society (BDS), which has been working for the protection of rights of homosexuals.¹⁴⁰ The petitioner contends

136. No. 2 of the Chapter on Marriage in the Country Code, 2020 (1963).

137. Section 4 of the Marriage Registration Act, 2028 (1971).

138. No. 1 and 4 of the Chapter on Bestiality in the Country Code, 2020 (1963).

139. Section 221 of the Draft Penal Code, 2059 (2003).

140. Achyut Prasad Kharel v. GoN (Writ No. 3736 of the year 2061)

that BDS has been carrying out unlawful activities such as openly supporting homosexual activities and the government has failed to control it.

Positive initiative to protect abuse against men having sex with men

After complaints of police brutality¹⁴¹, the Nepal police headquarter issued an order to its concerned departments to identify security persons or ex-security persons who were involved in harassing Men Having Sex with Men (MSM) and to take serious actions against them.¹⁴²

Supreme Court rekindles hope

In one case, four LGBTI organizations including Blue Diamond Society filed a writ petition in the Supreme Court demanding to defend and protect equal rights of lesbians, gays, bisexuals, transgender and the intersexed (LGBTI) people of Nepal. Recognizing LGBTIs as natural persons, the Supreme Court issued directive orders to the Government to end discrimination against LGBTI and ensure equal rights as that of the heterosexual men and women in Nepal. The Court also issued directive orders to Nepal government to ensure right to life according to their own identities and introduce laws providing equal rights to LGBTIs and amend all the discriminatory laws against LGBTI's rights as well.¹⁴³

141. 2060/1/17. B.S. (April 30, 2003)

142. Circular issued by Crime Investigation Department of Police Headquarter, letter no. 282/2059-60, date 2060/1/17 B.S. (April 30, 2003).

143. Information based on news reports; visit the website: <http://www.bds.org.np/historicalnews.htm>

On the issue of same sex marriage, The Court has also issued directive order to form a seven-member committee of a doctor appointed by the Health Ministry, one representative from the National Human Rights Commission, Law Ministry, Socialists appointed by the government of Nepal, representative from Nepal police, representative from Ministry of population and environment and one advocate as a representative from the LGBTI community and conduct a study about other countries' international practice on the same sex marriage. Based on the seven-member committee recommendation, the government has to enact an appropriate law. This bold initiative of the court has rekindled the hope for protection and promotion of rights of people belonging to the sexual minority communities.

Conclusions and Recommendations

Sexuality has a broad connotation as it encompasses sex, gender, and reproduction and it involves physical, psychological, and emotional aspects of a person. The exploitation or deprivation of sexuality results in violation of various fundamental rights. While sexuality should be private and confidential, the violations make it public. As a result, sexuality becomes a common concern for individuals, the state and society as a whole.

The law is a powerful instrument to influence people's thinking and actions. Beyond regulating day-to-day actions through civil and criminal codes, the law sets an idealistic standard for how people should treat each other. People look to the laws to learn what behaviour is and is not tolerable. These norms are critical in a context when many factors such as violence, discrimination, humiliation, and societal stigmatisation control sexuality of men and women. In Nepal, the law does not yet reflect the principles of non-discrimination and equality. The violence, discrimination, and exploitation caused by a male-dominated society will continue until the laws of Nepal match these ideals.

The study catalogues how prejudicial social and cultural perceptions relating to sexuality are still entrenched in the mindset of Nepalese people. More than fifty percent of the study respondents were under the age of thirty, highly educated, and from urban areas; yet they overwhelmingly expressed negative views of the sexuality of women.

The respondents do not represent the larger masses of people living in rural areas with less or no access to education, media, health care and family planning services. Another study should be conducted to measure the response of the rural Nepalese people with less access to means and resources; but in the meantime, we can imagine their responses will be less progressive than the respondents in this survey.

Various responses to this survey are helpful to illuminate the general perception of sexuality in Nepal. Most people felt that it was distasteful and offensive to discuss sex at all, but men seemed more open and frank on the subject than women. This disparity may come from the general perception that a woman's sexuality and sexual urges are inferior to those of men.

The responses succinctly indicate the deep-rooted perception of male's control over female's sexuality be it in the matter of making sexual advance or choice of contraceptives or engaging in marital sex without consent of the wife. Women could not negotiate for safer sex and they have to compromise for satisfaction of the male counterparts. Sexuality is found to be associated more with women's character than men's character.

The responses indicate that premarital sex is common in the society but it is much more common for men to indulge in it than women. Extramarital sex is viewed as an immoral and unethical act though it is prevalent. The responses indicate that the same sex relationship is not recognized even if it is consensual and that homosexuality is viewed as an immoral act. Viewing sexuality from rights perspective is lacking so far as women's sexuality is concerned. Moreover, sexuality is not properly understood as it is viewed more from the physical aspect rather than psychological and emotional aspects. Moreover, sex, a personal issue of every individual, is misunderstood as a large number of respondents (38%) still perceive sex to be a social issue. Also found from the analysis of the responses is a lack of proper knowledge of legal provisions that govern the matters of sexuality and family relations.

Though a good majority of respondents favored sex education, they are found to be deeply divided as to the grade from which sex education has to be started. Finally, the respondents have suggested a number of strategies to be taken in order to secure equal sexual rights to women and to effectively implement them: such as launching awareness raising activities and publicity campaigns for sensitization of the issues, reforming laws, policies and bringing change in societal attitude and behavior.

Only 20 percent of the respondents viewed sexuality as an emotional expression. A significant number (38 percent) of the respondents still said sexuality is a social issue rather than a personal issue. Though 60 percent viewed sexuality as the right of men women both, a significant number (30 percent) said that sexuality is right of men and only 10 percent said that it is the right of women. Men's control over sexuality is evident from the fact that 42 percent of the respondents said men take decision of selecting the contraceptives and 50 percent of the respondents said that it is men who initiates sex and not women. The use of contraceptives has been viewed only as a device to control unwanted pregnancy. The respondents share a number of popular proverbs that sufficiently demonstrate general biases against women's sexuality.

There are a large number of respondents who have a negative perception towards women who talk about sex as 50 percent of the respondents said they had no qualms about women talking openly about sex while 49 percent said that they perceive it as unnatural, unusual and obscene. Even on the issue of homosexuality, majority of the respondents (52 percent) viewed it as an immoral activity which they found to be repugnant while 45 percent viewed it as their right and was of the opinion that they should not be harassed and humiliated. This shows that the Nepalese society is not liberal at all, in also the matters relating to sexual orientation.

Though remaining chaste and faithful towards the husband is one of the religious values and virtue of a wife in Hinduism, the perception towards chastity is found to be a mixed one, as the question relating to chastity and 13 percent gave no answer. There is no moral value or requirement of remaining faithful to one's own wife as opposed to the strict requirement of chastity of women. Using contraceptives largely perceived to be a means for safe sex as 59 percent of the respondents said that their focus while selecting contraceptives is for safe sexual behaviour.

There is a dire need to raise awareness on the rights to reproductive health and right to sexuality at large all over the country. Reforming the laws and practices that discriminate against women in citizenship, property, reproductive health, family life and sexual matters is also an urgent issue. Equally important is to honour other people's rights in sexual matters including those having different sexual preferences.

Sexual rights are a part of the human rights that include the right to sexual pleasure without fear of infection, diseases, unwanted pregnancy; the right to sexual expressions and to make sexual decisions; right to sexual and reproductive health care and information and education; right to bodily integrity; right to enter into, maintain or discontinue the marital relationships; right to privacy as to sexuality and reproductive choices, health care services. Despite these, there are common misconceptions that women's sexuality is inferior to that of men and that sexual roles of women are confined to satisfy their male counterparts. These misconceptions lead to violation of series of other rights of women including the right to life and right to health. Cultural and religious values have been misinterpreted for justifying the continuity of these misconceptions.

A number of international human rights instruments have explicitly provided the protection and promotion of sexuality of both the sexes without discrimination of any type. The ICCPR has profoundly stressed on the protection of the right to self-determination while the ICESCR

has provided for the highest attainable standard of physical and mental health as right of every one. The CEDAW protects the equal right of men and women regarding marriage, children and reproductive education and it calls for elimination of gender-based discrimination in the field of health care. CEDAW's General Recommendation Nos. 19 and 24 call for the elimination of all discriminations and biases against women's sexuality and for protection of their sexual rights. The CRC also obligates the states to protect the children from all forms of sexual exploitations and abuses. In addition to these conventions, a series of international declarations also call for protection of sexual rights of men and women. The ICPD calls the state parties to eliminate inequalities among men and women by assisting women to establish and realize their rights including those that relate to reproductive and sexual health. The BPFSA calls for protection of human right of women including their right to have control over and decide freely and responsively on matters related to their sexuality.

The Interim Constitution of Nepal (2007) recognizes the right to equality; right to reproductive health and right against all forms of violence; right to privacy and rights on reproductive health. The laws relating to court procedures and judicial interpretation of the court have secured the right to privacy, which is closely related to sexuality. With the amendment to the Country Code, a number of provisions relating to property right and family relationships have been amended to with a view to bringing gender equality. After a long struggle, the Nepalese law has accepted the daughter as a coparcener of parental property. The daughter does not have to return their shares of parental property to the parental relatives after she gets married. Women may now dispose off all of their immovable exclusive property on her own. Not giving birth of a child for ten years of marriage due to the wife is no longer a ground for divorce for the husband. Amendment to the law against rape has criminalized marital rape which is one of the serious violence against women.

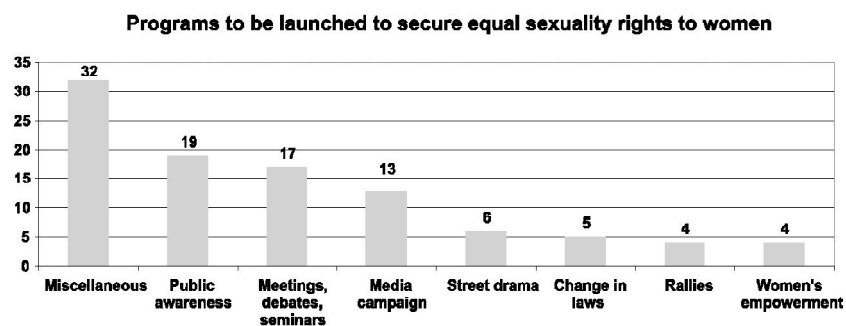
There are laws that discriminately control sexuality of women and do not control sexuality of men on the same grounds. The denial to women the right to transfer the citizenship to her husband and harsh conditions for acquiring citizenship for the children born to a foreign husband is a good example for this. The law exempt men for committing bigamy without divorcing his first wife on certain circumstances. To neutralize this discrimination, the recent amendment to the law requires the wife's consent for entering into a second marriage but the social and family status of the wife does not give her enough strength to say "no" to whatever the husband proposes. The law allows the husband to marry a second wife at the crucial time when the wife needs his care and support more. The law also indirectly favours polygamy by requiring the polygamous husband to provide equal shares of property to all co-wives.

The law is also discriminatory against the persons with different sexual orientations. The laws relating to marriage provide that marriage could be solemnized only between a man and a woman. Moreover, the law penalizes unnatural sexual behaviour with the provision for punishment of up to one-year of imprisonment. These provisions may be invoked to prosecute people engaging in homosexual acts. The recent judgment of the Supreme Court has, however, marked a significant departure towards the journey of securing the rights to the persons with different sexual orientation.

Though there has been progressive transformation in the Nepalese laws and policies on matters relating to sexuality with a number of interventions from relevant stakeholders, inherent biases against women's sexuality are still apparent in the laws and their interpretations as well. So much work has to be done with regard to securing sexuality rights of women in Nepal. The final question asked to the respondents was to suggest programs that would secure equal sexuality rights for men and implement those rights effectively.

The responses to this question were tremendous. Nineteen percent of the respondents said that the society has to learn first and for that public awareness is essential. Seventeen percent of the respondents said it is imperative that programs like seminars, meetings, debates, campaigns, interaction programs and open discussion programs should be conducted for more people to comprehend and disseminate insights about women's sexuality rights. Thirteen percent emphasized media campaign. They said that advertisements, books and magazines are important medium to awareness. Six percent of them said street dramas are very popular these days and it is an effective strategy for people to learn. Four percent said rallies are very popular and effective too. Five percent respondents said that there has to be legal changes and implementation of sexual rights of women practically in the law. Four percent of them said that if women were empowered first, they would definitely get their rights.

Chart 38



Other recommendations suggested by the respondents are that women should be allowed to remarry; there should be no discrimination in the grounds for divorce; women's organizations should play a major role in raising awareness; voluntary sex should not be looked upon as a crime; there has to be changes in attitudes regarding reproduction; women have to be aware that sexuality is her right; society has to be modernized giving up old/outdated traditions and cultures; women

should be provided with opportunities and they should socialize more often; media must be sensitized on women's rights.

Additionally, the respondents also suggested that pornography and prostitution should be legalized; human rights sensitization programs should be launched in the Police force; strong women should organize to motivate other women; advocacy should be started from the community levels thinking beyond the ideologies of the priests and opinions of leaders; national level lobbying should increase and use more statistical and narrative evidence; sons and daughters should be treated equally and respected equally; and reproductive health including sexual health should be integrated into all levels of policy; bi/polygamy should be strictly punished; a right-based approach to legislation that is sensitive to sexuality and gender issues should be instituted' and politicians should secure equal rights for women.

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